

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 Case No.
8 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 FRIDAY, JULY 12, 2019

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW
16 VOLUME II
17 - - -

18 Videotaped deposition of Michael
19 Mapes, held at the offices of The Mining
20 Exchange, A Wyndham Grand Hotel & Spa, 8
21 South Nevada Avenue, Colorado Springs,
22 Colorado, commencing at 8:01 a.m., on the
23 above date, before Carrie A. Campbell,
24 Registered Diplomate Reporter and Certified
25 Realtime Reporter.

26 - - -
27 GOLKOW LITIGATION SERVICES
28 877.370.3377 ph | 917.591.5672 fax
29 deps@golkow.com

1 A P P E A R A N C E S :
2

LANIER LAW FIRM, P.C.

3 BY: W. MARK LANIER

wml@lanierlawfirm.com

4 RACHEL LANIER

rachel.lanier@lanierlawfirm.com

5 ROBERT LEONE

robert.leone@lanierlawfirm.com

6 10940 W. Sam Houston Parkway N., Suite 100

Houston, Texas 77064

7 (713) 659-5200
8

9 GREENE, KETCHUM, FARRELL, BAILEY

& TWEEL LLP

10 BY: PAUL T. FARRELL, JR.

paul@greeneketchum.com

11 419 Eleventh Street

Huntington, West Virginia 25701

12 (314) 525-9115
13

14 MCHUGH FULLER LAW GROUP

BY: MICHAEL J. FULLER, JR.

15 mike@mchughfuller.com

AJ ELKINS

16 aj@mchughfuller.com

(VIA REALTIME STREAM)

17 97 Elias Whiddon Road

Hattiesburg, Mississippi 39402

18 (601) 261-2220
19

20 SIMMONS HANLY CONROY LLC

BY: LAURA L. FITZPATRICK

21 lfitzpatrick@simmonsfirm.com

SANFORD SMOKLER

22 ssmokler@simmonsfirm.com

(VIA REALTIME STREAM)

23 112 Madison Avenue

New York, New York 10016-7416

24 (212) 784-6400
25

1 BARON & BUDD, P.C.
2 BY: MARK PIFKO
3 mpifko@baronbudd.com
4 JAY LICHTER
5 jlichter@baronbudd.com
6 (VIA REALTIME STREAM)
7 STERLING CLUFF
8 scluff@baronbudd.com
9 (VIA REALTIME STREAM)
10 15910 Ventura Boulevard, Suite 1600
11 Encino, California 91436
12 (818) 839-2333
13

14 SPANGENBERG SHIBLEY & LIBER LLP
15 BY: PETER WEINBERGER
16 pweinberger@spanglaw.com
17 (VIA TELECONFERENCE)
18 1001 Lakeside Avenue East, Suite 1700
19 Cleveland, Ohio 44114
20 (216) 600-0114
21

22 MOTLEY RICE LLC
23 BY: LINDA SINGER
24 lsinger@motleyrice.com
25 (VIA REALTIME STREAM)
AMANDA UNTERREINER
aunterreiner@motleyrice.com
(VIA REALTIME STREAM)
401 Ninth Street NW, Suite 1001
Washington, DC 20004
(202) 232-5504

LEVIN PAPANTONIO THOMAS MITCHELL
RAFFERTY PROCTOR, P.A.
BY: PAGE POERSCHKE
ppoerschke@levinlaw.com
(VIA REALTIME STREAM)
316 South Baylen Street
Pensacola, Florida 32502
(850) 435-7000
Counsel for Plaintiffs

1 NAPOLI SHKOLNIK, PLLC
2 BY: HUNTER SHKOLNIK
3 hunter@napolilaw.com
4 (VIA TELECONFERENCE)
5 SHAYNA SACKS
6 ssacks@napolilaw.com
7 (VIA REALTIME STREAM)
8 JOSEPH CIACCIO
9 JCiaccio@napolilaw.com
10 (VIA REALTIME STREAM)
11 360 Lexington Avenue, 11th Floor
12 New York, New York 10017
13 (212) 397-1000
14 Counsel for Cuyahoga County
15
16

17 US DEPARTMENT OF JUSTICE
18 BY: JAMES R. BENNETT, II
19 james.bennett4@usdoj.gov
20 United States Courthouse
21 801 West Superior Avenue, Suite 400
22 Cleveland, Ohio 44113
23 (216) 622-3988
24
25

and

14 US DEPARTMENT OF JUSTICE
15 BY: MARIAMA C. SPEARS
16 mariama.c.spears@usdoj.gov
17 8701 Morrisette Drive
18 Springfield, Virginia 22152
19 (202) 598-6204
20 Representing the US DOJ and the Witness
21
22

23 REED SMITH LLP
24 BY: SHANNON MCCLURE
25 smcclure@reedsmith.com
26 ABIGAIL PIERCE
27 abigail.pierce@reedsmith.com
28 1717 Arch Street, Suite 3100
29 Philadelphia, Pennsylvania 19103
30 (215) 851-8100
31 Counsel for AmerisourceBergen
32
33

1 WILLIAMS & CONNOLLY LLP
2 BY: JENNIFER G. WICHT
3 jwicht@wc.com
4 BRAD MASTERS
5 bmasters@wc.com
6 725 Twelfth Street, N.W.
7 Washington, DC 20005
8 (202) 434-5331
9 Counsel for Cardinal Health, Inc.
10

11 COVINGTON & BURLING LLP
12 BY: CHRISTOPHER K. EPPICH
13 ceppich@cov.com
14 1999 Avenue of the Stars
15 Los Angeles, California 90067
16 (424) 332-4764
17

18 and
19

20 BY: MEGHAN E. MONAGHAN
21 mmonaghan@cov.com
22 850 Tenth Street, NW
23 Washington, DC 20001-4956
24 (202) 662-6000
25 Counsel for McKesson Corporation

1 JONES DAY
2 BY: NEAL J. STEPHENS
3 nstephens@jonesday.com
4 PATRICK BEISELL
5 pbeisell@jonesday.com
6 (VIA TELECONFERENCE)
7 1755 Embarcadero Road
8 Palo Alto, California 94303
9 (650) 739-3939
10 Counsel for Walmart
11
12
13
14
15

1 KIRKLAND & ELLIS, LLP
2 BY: JENNIFER LEVY
3 jennifer.levy@kirkland.com
4 CATIE VENTURA
5 catie.ventura@kirkland.com
6 1301 Pennsylvania Avenue, N.W.
7 Washington, DC 20004
8 (202) 879-5000
9 Counsel for Allergan Finance, LLC
10
11
12

13 BARTLIT BECK LLP
14 BY: KATE SWIFT
15 kswift@bartlit-beck.com
16 54 West Hubbard Street, Suite 300
17 Chicago, Illinois 60654
18 (312) 494-4400
19 Counsel for Walgreens
20
21
22

23 DECHERT LLP
24 BY: ERIK W. SNAPP
25 erik.snapp@dechert.com
35 West Wacker Drive, Suite 3400
Chicago, Illinois 60601
(312) 646-5800
Counsel for Purdue Pharma

26 ROPES & GRAY, LLP
27 BY: WILLIAM DAVISON
28 william.davison@ropesgray.com
29 800 Boylston Street
30 Boston, Massachusetts 02199-3600
31 (617) 951-7000
32 Counsel for Mallinckrodt & SpecGx
33
34
35

1 BARNES & THORNBURG LLP
BY: WILLIAM A. HAHN
2 william.hahn@btlaw.com
11 South Meridian Street
3 Indianapolis, Indiana 46204-3535
(317) 236-1313
4 Counsel for HD Smith
5

6 MORGAN, LEWIS & BOCKIUS LLP
BY: JOHN P. LAVELLE, JR.
7 john.lavelle@morganlewis.com
1701 Market Street
8 Philadelphia, Pennsylvania 19103-2921
(215) 963-5000
9 Counsel for Rite Aid
10

11 LOCKE LORD LLP
BY: BRANDAN MONTMINY
12 brandan.montminy@lockelord.com
2200 Ross Avenue, Suite 2800
13 Dallas, Texas 75201
(214) 740-8445
14 Counsel for Henry Schein, Inc., and
Henry Schein Medical Systems, Inc.
15
16

ZUCKERMAN SPAEDER LLP
17 BY: ANTHONY M. RUIZ
aruiz@zuckerman.com
18 (VIA TELECONFERENCE AND STREAM)
1800 M Street NW, Suite 1000
19 Washington, DC 20036-5807
(202) 778-1800
20 Counsel for CVS Indiana, LLC, and
CVS RX Services, Inc.
21
22
23
24
25

1 O'MELVENY & MYERS LLP
BY: RYAN SYNDER
2 rsnyder@omm.com
(VIA TELECONFERENCE AND STREAM)
3 AMY LUCAS
alucas@omm.com
4 (VIA REALTIME STREAM)
SETH BAGLIN
5 sbaglin@omm.com
(VIA REALTIME STREAM)
6 1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067
7 (213) 430-6326
8 and
9 TUCKER ELLIS LLP
BY: JEFFREY C. SINDELAR, JR.
10 jeffrey.sindelar@tuckerellis.com
(VIA TELECONFERENCE)
11 950 Main Avenue, Suite 1100
Cleveland, Ohio 44113-7213
12 (216) 696-3697
Counsel for Janssen and Johnson &
13 Johnson
14
15 MORGAN, LEWIS & BOCKIUS LLP
BY: MAUREEN K. BARBER
16 valerie.toth@morganlewis.com
(VIA TELECONFERENCE AND STREAM)
17 One Oxford Centre, 32nd Floor
Pittsburgh, Pennsylvania 15219-6401
18 (412) 560-3300
Counsel for Teva Pharmaceuticals
19 USA, Inc., Cephalon, Inc., Watson
Laboratories, Inc., Actavis LLC,
20 Actavis Pharma, Inc., f/k/a Watson
Pharma, Inc.
21
22
23
24
25

1 MARCUS & SHAPIRA LLP
2 BY: JOSHUA A. KOBRIN
3 kobrin@Marcus-Shapira.com
4 (VIA TELECONFERENCE AND STREAM)
5 301 Grant Street, 35th Floor
6 Pittsburgh, Pennsylvania 15219-6401
7 (412) 338-4690
8 Counsel for HBC

9 FOX ROTHSCHILD LLP
10 BY: ZACHARY MARTIN
11 Zmartin@foxrothschild.com
12 (VIA TELECONFERENCE)
13 2700 Kelly Road, Suite 300
14 Warrington, Pennsylvania 18976-3624
15 (215) 345-7500
16 Counsel for Prescription Supply, Inc.

17 CAVITCH FAMILO & DURKIN, CO., L.P.A.
18 BY: ERIC J. WEISS
19 eweiss@cavitch.com
20 (VIA TELECONFERENCE)
21 1300 East 9th Street
22 Cleveland, Ohio 44114
23 (216) 621-7860
24 Counsel for Discount Drug Mart

25 FOLEY & LARDNER LLP
26 BY: KATY K. KOSKI
27 kkoski@foley.com
28 (VIA REALTIME STREAM)
29 111 Huntington Avenue, Suite 2500
30 Boston, Massachusetts 02199-7610
31 (617) 342-4000
32 Counsel for Anda

1 BAILEY WYANT PLLC
2 BY: JUSTIN TAYLOR
3 jtaylor@baileywyant.com
4 (VIA REALTIME STREAM)
5 500 Virginia Street East, Suite 600
6 Charleston, West Virginia 25301
7 (304) 345-4222
8 Counsel for West Virginia Board of
9 Pharmacy

10 ALSO PRESENT:

11 SPECIAL MASTER DAVID R. COHEN
12 david@specialmaster.law
13 24400 Chagrin Boulevard, Suite 300
14 Cleveland, Ohio 44122
15 (216) 831-0001

16 Juan Wilson, Lanier Law Firm
17 Georgia Macy, Lanier Law Firm

18 VIDEOGRAPHER:

19 DAN LAWLOR,
20 Golkow Litigation Services

21 - - -

1	INDEX		
2			PAGE
3	APPEARANCES.....		312
4	EXAMINATIONS		
5	BY MR. LANIER.....		324
6	BY MS. MCCLURE.....		509
7	BY MR. EPPICH.....		522
8	BY MS. FITZPATRICK.....		537
9			
10	EXHIBITS		
11	No.	Description	Page
12	Mapes 4A	July 23, 1998 US Department of Justice, DEA letter to Chris Zimmerman,	454
13		ABDCMDL00269347 -	
14		ABDCMDL00269357	
15	Mapes 20	ABDC Privilege Log - Alaska Subpoena,	332
16		ABDCMDL00037421 -	
17		ABDCMDL00037422	
18	Mapes 21	"The Drug Industry's Triumph Over the DEA,"	345
19		Higham and Bernstein	
20	Mapes 22	E-mail(s).	355
21		His-MDL-00064822 -	
22		his-MDL-00064825	
23	Mapes 23	E-mail(s),	358
24		His-MDL-00650515 -	
25		his-MDL-00650522	
	Mapes 24	Mike Mapes LinkedIn profile	360

1	Mapes 25	Organizational chart, ABDCMDL00046783 -	365
2		ABDCMDL00046788	
3	Mapes 26	E-mail(s), ABDCMDL00315883 -	395
4		ABDCMDL00315884	
5	Mapes 27	Conference call with Mr. John Gilbert, December 6, 2005	401
6		memorandum, US-DEA-00000369 -	
7		US-DEA-00000370	
8	Mapes 28	January 18, 2006 letter from McKesson to Joseph T.	407
9		Rannazzisi, US-DEA-00000503 -	
10		US-DEA-00000506	
11	Mapes 29	Settlement and Release Agreement and Administrative Memorandum of	408
12		Agreement, MCKMDL00337001 - MCKMDL00337024	
13			
14	Mapes 30	Internet Pharmacy Data meeting with AmerisourceBergen DEA Headquarters August 10, 2005	412
15			
16	Mapes 31	Suspicious Order Reporting Policy and Procedure, ABDCMDL00478320 -	456
17		ABDCMDL00478322	
18	Mapes 32	Mark Lanier handwritten demonstratives	509
19			
20	Mapes 33	Deposition of Michael Mapes, September 16, 2016, ABDCMDL00046855 -	517
21		ABDCMDL00046856; ABDCMDL00046909 - ABDCMDL000466910	
22			
23	Mapes 34	1:17-md-0804-DAP, list of attorneys	522
24	Mapes 35	Handwritten demonstratives by plaintiffs further marked up by	537
25		defendants	

1 Mapes 36 Irpino Law Firm Memorandum, from 541
Pearl Robertson to File, Date
2 July 11, 2019

3 Mapes 37 Excerpt from Volume II of the 543
deposition of Thomas Prevoznik,
4 April 18, 2019

5 Mapes 38 Appendix B, 553
MCKMDL00355349 - MCKMDL00355415

6

(Exhibits attached to the deposition.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 VIDEOGRAPHER: We are now on
2 the record. My name is Dan Lawlor.
3 I'm the videographer with Golkow
4 Litigation Services.

5 Today's date is July 12, 2019.
6 The time is 8:01 a.m.

7 This video deposition is being
8 held in Colorado Springs, Colorado, in
9 the matter of National Prescription
10 Opiate Litigation, MDL Number 2804.

11 This is the continuing
12 deposition of Michael Mapes. The
13 court reporter is Carrie Campbell.

14 And, Mr. Mapes, I remind you
15 that you're still under oath from
16 yesterday, and please proceed.

17 EXAMINATION

18 QUESTIONS BY MR. LANIER:

19 Q. Sir, you are Mr. Mapes?

20 A. Yes.

21 Q. You gave a deposition yesterday
22 with a bunch of lawyers for the opioid
23 companies asking you questions, right?

24 MS. MCCLURE: Form.

25 THE WITNESS: Right.

1 QUESTIONS BY MR. LANIER:

2 Q. You had the distributors asking
3 you questions; you had some of the pharmacies
4 asking you questions, correct?

5 A. Yes.

6 Q. Through their lawyers?

7 A. Right.

8 Q. Okay. You understand I
9 represent the plaintiffs in this case, the
10 counties, the folks that have brought the
11 lawsuit.

12 You understand that?

13 A. Yes.

14 Q. All right. One of the things I
15 found interesting yesterday is one of the
16 lawyers, I believe it was the young lady for
17 the AmerisourceBergen group company -- let's
18 find where we've got -- there it is -- made a
19 big point of saying to you on the record for
20 the jury "we've never met before."

21 MS. MCCLURE: Form.

22 QUESTIONS BY MR. LANIER:

23 Q. Do you remember that?

24 A. Yes.

25 Q. And you, "Oh, no, I've never

1 met you."

2 Remember?

3 A. Well, not those exact words,
4 but that -- yes.

5 Q. And y'all went on and on about
6 two meetings that you had with plaintiffs'
7 lawyers, oh, a year or so ago where you never
8 even could remember the names of the lawyers
9 there or the faces, right?

10 MS. MCCLURE: Objection.

11 MR. EPPICH: Objection.

12 Misstates testimony.

13 THE WITNESS: Correct, I didn't
14 remember the names of the attorneys
15 that were there.

16 QUESTIONS BY MR LANIER:

17 Q. Right.

18 And remember they were -- you
19 were asked over and over, could it be any
20 lawyers in this room? You know, we're in a
21 room with, what, more lawyers than people --
22 I mean, you've got 20-plus lawyers in this
23 room, don't you?

24 MS. MCCLURE: Objection to
25 form. Compound. Misstates the

1 record.

2 MR. EPPICH: Objection.

3 Characterization.

4 QUESTIONS BY MR. LANIER:

5 Q. I mean, just listen to how many
6 of them are objecting.

7 You've got a bunch of them in
8 here, don't you?

9 A. Yes.

10 Q. And not one lawyer do you
11 recognize from that meeting?

12 A. That's correct.

13 Q. And not one name do you
14 remember from that meeting?

15 MS. MCCLURE: Form.

16 THE WITNESS: I remember a
17 couple of names at the meeting now,
18 but I didn't remember those yesterday.

19 QUESTIONS BY MR. LANIER:

20 Q. Did you go back and look at
21 some notes or something?

22 A. Yes, I looked at my calendar.

23 Q. Oh, okay.

24 What were the names that you
25 went back and did homework on overnight?

1 A. I saw one was Richard Fields.

2 Q. I've never heard of him.

3 Who is he?

4 A. He's an attorney representing
5 some plaintiffs.

6 Q. Who?

7 A. I'm not sure.

8 Q. Me either.

9 Who else?

10 A. See, I don't remember the name
11 of the other one.

12 Q. Okay. But you understand
13 you're here to tell the truth?

14 A. Yes.

15 Q. And you understand that's to be
16 the whole truth?

17 A. Yes.

18 Q. And you're not supposed to
19 shade things or make things look one way just
20 because of relationships or things like that,
21 right?

22 A. Correct.

23 Q. And what struck me as odd is in
24 all of the talk that the Amerisource lawyer
25 did with you and the other lawyers, and we've

1 never met before, blah-blah-blah, you never
2 told the jury you sure had met her client,
3 AmerisourceBergen, on many times, hadn't you?

4 MS. MCCLURE: Objection to
5 form. Misstates the witness'
6 testimony. Mischaracterizes the
7 record.

8 THE WITNESS: Yeah, I did
9 mention, I'm not sure it was to her,
10 that I did consulting for
11 AmerisourceBergen.

12 QUESTIONS BY MR. LANIER:

13 Q. Yeah, but by "did consulting,"
14 that's one thing.

15 But in terms of having meetings
16 and all the rest of this stuff, you met with
17 AmerisourceBergen a whole lot, didn't you?

18 MS. MCCLURE: Form.

19 THE WITNESS: With anyone from
20 the company or --

21 QUESTIONS BY MR. LANIER:

22 Q. Yes, sir.

23 A. And are we talking about during
24 my time at DEA or post-DEA?

25 Q. I'm talking about post-DEA.

1 A. Yes, because I was working with
2 them, consulting with them.

3 Q. Well, you weren't just working
4 with them, consulting with them. You
5 understand they've got you on their
6 organizational charts?

7 A. Okay.

8 Q. You understand that they had
9 you doing confidential work for them that
10 they don't want anybody to know about?

11 MS. MCCLURE: Objection to
12 form.

13 THE WITNESS: Looking at things
14 for them, yes.

15 QUESTIONS BY MR. LANIER:

16 Q. So you met AmerisourceBergen,
17 her client, the lawyer's client, even though
18 the lawyer made a big show out of the fact
19 she'd personally not met you, true?

20 MS. MCCLURE: Form.

21 THE WITNESS: Yes, I've met
22 with AmerisourceBergen.

23 QUESTIONS BY MR. LANIER:

24 Q. And you do privileged work for
25 AmerisourceBergen, don't you, confidential

1 work?

2 A. I did.

3 Q. I mean, we've got -- do you
4 know what a privilege log is?

5 A. Yes.

6 Q. A privilege log is where
7 lawyers don't want to give up documents in
8 litigation --

9 MS. MCCLURE: Objection to
10 form.

11 QUESTIONS BY MR. LANIER:

12 Q. -- so instead of --

13 MR. LANIER: Can I get the
14 question finished, please?

15 MS. MCCLURE: I thought you
16 were finished.

17 MR. LANIER: Oh, no, there
18 wasn't a question there.

19 QUESTIONS BY MR. LANIER:

20 Q. A privilege log is when lawyers
21 don't want to give up documents during
22 litigation because they believe that they're
23 privileged for some reason, and so they --

24 MS. MCCLURE: Objection to the
25 narrative.

1 MR. LANIER: Can I finish
2 before you object, please? Otherwise
3 it makes it really hard to cut a video
4 to play.

5 Special Master, I'd ask that I
6 be allowed to finish my question
7 before the objection.

8 MS. MCCLURE: Special Master,
9 it wasn't a question. I --

10 SPECIAL MASTER COHEN: Will you
11 just wait for the objection to be
12 posed until the question is asked.
13 You'll still have time to lodge it.

14 QUESTIONS BY MR. LANIER:

15 Q. You understand that lawyers on
16 behalf of their clients will produce
17 privilege logs when they believe that there
18 are documents that they do not want to hand
19 out because those documents have a privilege
20 or some reason that they may have.

21 Do you understand about that?

22 MS. MCCLURE: Objection to
23 form.

24 THE WITNESS: Yes.

25 (Mapes Exhibit 20 marked for

1 identification.)

2 QUESTIONS BY MR. LANIER:

3 Q. I'm going to hand you a
4 document we're going to mark as Exhibit
5 Number 20. And this is just one sample, but
6 you'll look at this, and this is a privilege
7 log by ABDC.

8 Do you know what that
9 abbreviation stands for?

10 MR. BENNETT: Counsel, do you
11 have a copy for me?

12 MR. LANIER: Yes.

13 QUESTIONS BY MR. LANIER:

14 Q. Do you know what that
15 abbreviation stands for?

16 A. Yes, I do.

17 Q. What does that stand for?

18 A. AmerisourceBergen Drug Company.

19 Q. That's the client of the young
20 lady that was asking you the questions saying
21 over and over "we've never met before,"
22 right?

23 MS. MCCLURE: Objection to
24 form.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. LANIER:

2 Q. And so that company produces
3 this privilege log, and they've got a
4 document down here, just one example, but
5 it's the first privileged document on the log
6 that dates from December of 2009, Michael
7 Mapes being the author of the document.

8 Do you see that?

9 A. I do.

10 Q. And it's evidently under the
11 description a report that you prepared --
12 thank you.

13 It is a report you prepared at
14 the direction of a lawyer, not the head
15 lawyer, just a vice president and associate
16 general counsel.

17 Do you see that?

18 A. I do.

19 Q. Providing information to assist
20 with rendering of legal advice on their order
21 monitoring program review.

22 Do you see that?

23 A. I do.

24 Q. So when I say you did
25 privileged work for them, even though the

1 lawyer had you tell the jury that you'd never
2 met her before, the truth of the matter is
3 you've been working with their lawyers,
4 haven't you?

5 MS. MCCLURE: Form.

6 THE WITNESS: Yes.

7 QUESTIONS BY MR. LANIER:

8 Q. So you may not have met that
9 lawyer for AmerisourceBergen, but you were
10 working for other lawyers, weren't you?

11 A. Yes.

12 Q. And that's all part of what you
13 did with the company as their man helping
14 them with the diversion control program,
15 right?

16 MS. MCCLURE: Form.

17 THE WITNESS: That's correct.

18 QUESTIONS BY MR. LANIER:

19 Q. Well, we'll get into that in a
20 little bit, but I want to start out with a
21 roadmap and show you what I plan on asking
22 you today.

23 Okay?

24 A. Okay.

25 Q. I call your roadmap -- that's

1 you, right there, Michael Mapes, right?

2 A. Yes.

3 Q. Tried to get a good picture.

4 You okay with that picture?

5 A. It is what it is.

6 Q. Oh, it's not bad.

7 How old do you think that

8 picture is?

9 A. Three years maybe.

10 Q. Okay. You shaved for that

11 picture. You didn't shave for the jury

12 today, did you?

13 A. I did not.

14 Q. That's all right.

15 U-turn road.

16 Your career has taken a lot of

17 twists and turns, hasn't it?

18 MS. MCCLURE: Form.

19 THE WITNESS: In what regard?

20 QUESTIONS BY MR. LANIER:

21 Q. Well, I mean, you're all over

22 the map. You've done work for the

23 government. You've done work for industry,

24 lots of different parts of industry. You've

25 got companies that you've kind of helped

1 start and help get off the ground. You've
2 got -- you claim expertise in a lot of
3 different areas, right?

4 MS. MCCLURE: Form. Compound.
5 Characterization.

6 THE WITNESS: I have experience
7 in a lot of areas, yes.

8 QUESTIONS BY MR. LANIER:

9 Q. And so here's what I'd like to
10 do. I'd like to look at this road, and I'd
11 like to consider your personal background
12 first. We'll make a stop there.

13 Then we're going to make a stop
14 at your time with the DEA, and then we're
15 going to make a stop at your time doing work
16 for industry.

17 And let's see if maybe your
18 testimony kind of rotates around based upon
19 where you are and who you're working for.

20 Okay?

21 A. Okay.

22 MR. BENNETT: Objection.

23 QUESTIONS BY MR. LANIER:

24 Q. Now, in that regard, the first
25 stop we're going to make is personal

1 background. And I'm going to keep a sheet of
2 your personal background, and we're going to
3 mark these documents that I'm showing to the
4 jury as an exhibit so that both sides have
5 them and we've got the benefit of them as a
6 demonstrative exhibit for the jury.

7 Your personal background, you
8 gave us a lot of it yesterday, but what I'd
9 like to do is sort of go in and look at you
10 from another angle.

11 Are you familiar with the
12 concern that has been expressed about a
13 revolving door between government and
14 industry?

15 A. Yes.

16 Q. And a revolving door -- you
17 know, most doors are just a door that's, you
18 know, this, with a doorknob. But a revolving
19 door is one of those doors that tends to
20 revolve around, such that you've got an
21 ability to go in one way and out the other.

22 Do you follow me?

23 A. Yes.

24 Q. And the concern has been one
25 because there seem to be people who work for

1 the DEA and spend their time making
2 connections, learning the ins and outs,
3 learning the niceties of how things work, but
4 then they'll retire or take their pension
5 from the DEA and go to work for industry, the
6 very companies that they were supposed to be
7 looking over, right?

8 MS. MCCLURE: Form.

9 MR. EPPICH: Objection.

10 Argumentative.

11 THE WITNESS: And could you
12 restate the question again?

13 QUESTIONS BY MR. LANIER:

14 Q. Sure.

15 The reason the revolving door
16 is a concern is because there seems to be a
17 pattern of folks working for the DEA who then
18 go to work for the very industries they were
19 supposed to be overseeing, correct?

20 MS. MCCLURE: Form.

21 Argumentative.

22 THE WITNESS: Yes, I went to
23 work with the industries after
24 retiring from DEA.

25

1 QUESTIONS BY MR. LANIER:

2 Q. Yeah. You worked at DEA, and
3 they have a mandatory retirement, don't they?

4 MS. MCCLURE: Form.

5 THE WITNESS: Not in the
6 diversion control program.

7 QUESTIONS BY MR. LANIER:

8 Q. So you did not have a mandatory
9 retirement; you could have kept working
10 there?

11 A. Yes.

12 Q. But you chose to retire?

13 A. Yes, I did.

14 Q. You chose to retire at what
15 age, 65? 70?

16 A. 55.

17 Q. Oh, you retired at 55.

18 Did you get a pension?

19 A. Yes.

20 Q. What percentage of your pay was
21 your pension?

22 A. I don't really recall.

23 Q. How much were you making a year
24 when you retired?

25 A. I'm not certain of that number.

1 Q. Well, you got to have a general
2 idea. I mean, you're remembering
3 conversations yesterday that happened
4 12 years ago, 14 years ago. Surely you've
5 got a general idea how much money you used to
6 make.

7 MS. MCCLURE: Form.
8 Argumentative.

9 THE WITNESS: Generally 120,
10 125,000.

11 QUESTIONS BY MR. LANIER:

12 Q. All right. So making something
13 in the range -- I'll do that squiggle mark --
14 of 120 to 125,000 per year.

15 Now, when you retired -- that
16 had been your salary. When you retired, you
17 got a percentage of that as your retirement
18 pay, correct?

19 A. That's correct.

20 Q. And you don't know even roughly
21 what percentage?

22 MS. MCCLURE: Form. Asked and
23 answered.

24 THE WITNESS: Roughly 55 or
25 60 percent.

1 QUESTIONS BY MR. LANIER:

2 Q. All right. So you would get
3 roughly -- and that's still today, I assume,
4 right?

5 A. Yes.

6 MS. SWIFT: We've got the
7 realtime --

8 MR. LANIER: Y'all want to go
9 off the record? Okay.

10 VIDEOGRAPHER: We're going off
11 record. The time is 8:17.

12 (Off the record at 8:17 a.m.)

13 VIDEOGRAPHER: We're going back
14 on record. Beginning of Media File 2.
15 The time is 8:21.

16 QUESTIONS BY MR. LANIER:

17 Q. Before the technical glitch,
18 you and I had made clear that you were
19 drawing about half of your salary now that
20 you're in retirement, maybe a little more,
21 maybe 60 percent, so somewhere around \$75,000
22 a year?

23 A. That's correct.

24 Q. But while you retired from the
25 DEA, so the jury's clear, you just started

1 going to work for industry, didn't you?

2 MS. MCCLURE: Form.

3 THE WITNESS: Yes, I did work
4 for industry.

5 QUESTIONS BY MR. LANIER:

6 Q. In fact, there's an expression
7 that y'all use; you were hired up --

8 MS. MCCLURE: Form.

9 QUESTIONS BY MR. LANIER:

10 Q. -- by industry, weren't you?

11 MS. MCCLURE: Foundation.

12 THE WITNESS: I haven't heard
13 that expression.

14 QUESTIONS BY MR LANIER:

15 Q. You've never heard the
16 expression "hired up"?

17 A. No, I haven't.

18 Q. Okay.

19 MS. MCCLURE: Mr. Lanier,
20 consistent with the practice during
21 the Rannazzisi deposition, I do note
22 that you are writing information on
23 the sheet of paper you have in front
24 of me in advance of asking the witness
25 the question and in advance of the

1 witness confirming that yes or no he's
2 familiar with the concept of "hired
3 up."

4 So I would request, again, that
5 you refrain from writing information
6 on the sheet which suggests that it
7 is, in fact, information obtained from
8 Mr. Mapes until Mr. Mapes has, in
9 fact, provided you with that
10 information.

11 MR. LANIER: I'm allowed --
12 he's an adverse witness. I'm allowed
13 to lead him, so I'm allowed to write
14 questions that may be leading in that
15 way.

16 I'm also allowed to write any
17 note I want to in terms of "look at
18 this, please, and tell me if you agree
19 with that statement."

20 You show him a document; I show
21 him a demonstrative. Nobody, no
22 lawyer in any trial I've ever been in,
23 has to ask questions before they use a
24 demonstrative or show a demonstrative
25 to a witness, and this is no

1 different.

2 MS. MCCLURE: I continue to
3 maintain my objection.

4 MR. LANIER: Okay.

5 QUESTIONS BY MR. LANIER:

6 Q. So you've not heard that
7 expression "hired up" by industry?

8 A. No, I have not.

9 Q. All right. Let's see if we can
10 find some of where it may come from.

11 You read the New York -- I mean
12 the Washington Post ever?

13 A. I have in the past.

14 Q. Are you familiar with the
15 article "The Drug Industry's Triumph Over the
16 DEA"? I'm going to mark it as Exhibit
17 Number 21.

18 (Mapes Exhibit 21 marked for
19 identification.)

20 QUESTIONS BY MR. LANIER:

21 Q. Put it up here for the jury to
22 see.

23 Are you familiar with this
24 article, sir?

25 MS. MCCLURE: Mr. Lanier, while

1 Mr. Mapes is taking the opportunity to
2 review the document that you've put in
3 front of you him, I would also note
4 that Mr. Mapes is not an adverse
5 witness at this point. You did
6 cross-notice the deposition.

7 MR. LANIER: You will find that
8 I often notice the deposition of
9 adverse witnesses. A cross-notice is
10 not what defines him as an adverse
11 witness.

12 MS. MCCLURE: You have not
13 established adversity; nevertheless, I
14 continue to maintain my objection to
15 the extent that you write information
16 on a sheet of paper and suggest for
17 the jury that it is --

18 MR. LANIER: Timeout.

19 MS. MCCLURE: -- in fact,
20 information that Mr. Mapes has
21 provided.

22 MR. LANIER: May I suggest that
23 all objections except to form and
24 responsiveness have been reserved
25 under the rules, and that we're trying

1 to get out of this today in an
2 expedient manner and that I'm spending
3 more time talking to you on the record
4 and hearing you talk to me than I am
5 the witness. And that's no way to get
6 this done.

7 And I'm under a limited time
8 perspective of what I can do, so I'd
9 ask you to adhere to the rules or I
10 will ask the special master to
11 intervene.

12 MS. MCCLURE: I am adhering to
13 the rules, and I also note that we
14 were talking during the time Mr. Mapes
15 was taking the opportunity to review a
16 lengthy document that you have placed
17 before him.

18 QUESTIONS BY MR. LANIER:

19 Q. Sir, are you familiar with this
20 document?

21 A. I don't believe I've seen the
22 document itself before. I've heard
23 discussions about it.

24 Q. All right. You've heard
25 discussions about this article that is

1 subtitled "Amid a targeted lobbying effort,
2 Congress weakened the DEA's ability to go
3 after drug distributors even as opioid deaths
4 continue to rise, a Washington Post and
5 60 Minutes investigation finds."

6 You're at least familiar with
7 the fact this article's out there even if you
8 haven't read it, fair?

9 A. Yes.

10 Q. In fact, you were contacted by
11 60 Minutes but you chose not to speak to
12 them, true?

13 MS. MCCLURE: Objection.

14 Foundation. Leading. Form.

15 THE WITNESS: That's correct.

16 QUESTIONS BY MR. LANIER:

17 Q. Now, in this article I direct
18 your attention to what is marked in the
19 corner as page 53.15. It's a chart that I've
20 got on the overhead.

21 Do you find that chart?

22 A. Yes.

23 Q. It says, "At least 56 DEA and
24 justice officials went to work for the
25 pharmaceutical industry. Pharmaceutical

1 companies and the law firms that represent
2 them hired at least 56 former officials since
3 2000."

4 And then you got all of these
5 yellow dots that show the people.

6 Do you see that?

7 MR. STEPHENS: Object to form.

8 THE WITNESS: I do.

9 QUESTIONS BY MR. LANIER:

10 Q. You're one of these dots,
11 aren't you?

12 MR. STEPHENS: Object to form.

13 MR. EPPICH: Objection.

14 Foundation. Calls for speculation.

15 THE WITNESS: I don't know that
16 I am, because it's not -- there aren't
17 names with the majority of the dots.

18 QUESTIONS BY MR. LANIER:

19 Q. Well, let's put it this way:
20 You are someone who was a DEA official who
21 went to work for the pharmaceutical industry
22 since 2000, aren't you?

23 MS. MCCLURE: Form.

24 Foundation.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. LANIER:

2 Q. You did that in 2007 or '8?

3 A. 2008.

4 Q. So this row right here may not
5 have a dot for you, but we at least know that
6 Michael Mapes belongs in that column, fair?

7 MS. MCCLURE: Form. Leading.

8 MR. EPPICH: Object to the
9 demonstrative. Misstates the
10 testimony.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. LANIER:

13 Q. All right. Now, in this
14 regard, sir, this idea of a revolving door,
15 you being -- working governing industry and
16 then all of a sudden you going to work for
17 industry, you get paid by industry when they
18 hire you to do their work, don't you?

19 MS. MCCLURE: Form.
20 Foundation. Leading.

21 THE WITNESS: Yes.

22 QUESTIONS BY MR. LANIER:

23 Q. So in addition to the money
24 that you were getting in retirement from the
25 government, you start making money from

1 industry, fair?

2 MS. MCCLURE: Form.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. LANIER:

5 Q. And the money you've made from
6 industry, is that based always on an hourly
7 rate or was it ever on a project or as a
8 salary?

9 A. A little of both.

10 Q. All right. So tell us -- you
11 know, American taxpayers are continuing to
12 pay you your retirement benefit while
13 industry is paying you to do work for them.
14 Tell us how industry is paying you.

15 MS. SWIFT: Objection.

16 Leading.

17 MS. MCCLURE: Objection.

18 Leading. Form.

19 QUESTIONS BY MR. LANIER:

20 Q. That is a bad question. Let me
21 reask it.

22 Sir, how has industry been
23 paying you since 2008?

24 MS. MCCLURE: Form.

25 THE WITNESS: Mostly by the

1 hour.

2 QUESTIONS BY MR. LANIER:

3 Q. All right. What's your hourly
4 rate been?

5 MS. MCCLURE: Form.

6 THE WITNESS: It has changed.

7 It started at \$100 an hour, and the
8 most recent sum at \$300 an hour.

9 QUESTIONS BY MR. LANIER:

10 Q. If you were to work 40 hours a
11 week, which maybe you do more, maybe you do
12 less, but if you work 40 hours a week, full
13 time, for 50 weeks out of the year, take a
14 couple weeks vacation, that would be
15 2,000 hours a year. 2,000 hours a year, is
16 that somewhere between 200,000 and 600,000
17 per year you now make or could make doing
18 industry work in addition to your retirement
19 from DEA?

20 Did I do that right?

21 MS. MCCLURE: Form.

22 Speculation. And object to the
23 narrative and the testimony by the
24 plaintiffs' attorney. Incomplete
25 hypothetical.

1 THE WITNESS: I think you're
2 correct if I worked 40 hours a week,
3 50 weeks a year, but I don't.

4 QUESTIONS BY MR. LANIER:

5 Q. Right.

6 Are you getting paid for your
7 testimony here?

8 A. No.

9 Q. Okay. Because I know you've
10 been hired by one of the companies in this
11 case right now, haven't you?

12 MS. MCCLURE: Form. Misstates
13 the witness' testimony.

14 THE WITNESS: Yes.

15 QUESTIONS BY MR. LANIER:

16 Q. Tell the jury who's hired you,
17 who you're working for right now, that was
18 asking you questions yesterday.

19 MS. WICHT: Object to form.

20 THE WITNESS: The Williams
21 Connolly firm.

22 QUESTIONS BY MR. LANIER:

23 Q. And who do they represent, to
24 your knowledge?

25 A. Cardinal Health.

1 Q. Now, sir, we've got -- I went
2 on the Internet.

3 MR. LANIER: Do I have copies
4 of this?

5 While they're getting that, let
6 me take a step back.

7 QUESTIONS BY MR LANIER:

8 Q. You went out to these companies
9 you used to oversee. You went out to these
10 companies and you actually solicited their
11 business, didn't you?

12 MS. MCCLURE: Form.
13 Speculation. Foundation.

14 THE WITNESS: No, I didn't.

15 QUESTIONS BY MR. LANIER:

16 Q. You didn't send letters to
17 these companies saying, "Hey, I'm out of the
18 door now. I'm out of the DEA. I'm ready to
19 work for you"?

20 A. No, I did not.

21 MS. MCCLURE: Form.

22 QUESTIONS BY MR. LANIER:

23 Q. Now, see, I got, for example,
24 what looked to me like you asking Henry
25 Schein if they would like you to work for

1 them.

2 MS. MCCLURE: Form.

3 Foundation. Leading.

4 QUESTIONS BY MR. LANIER:

5 Q. Do you not remember that at
6 all?

7 A. No, I don't.

8 (Mapes Exhibit 22 marked for
9 identification.)

10 QUESTIONS BY MR. LANIER:

11 Q. I'm going to hand you a
12 document that we'll mark as Exhibit
13 Number 22.

14 There you go, sir. Exhibit
15 Number 22 looks like an e-mail from an
16 MR Mapes.

17 Is that you?

18 A. Yes, it is.

19 Q. And it is, subject, consulting
20 proposal.

21 Do you see that?

22 A. Yes.

23 Q. You sent an e-mail to this
24 Michael DiBello where you said, "Attached is
25 a proposal for due diligence consulting for

1 Henry Schein, Inc."

2 Did I read that correctly?

3 A. Yes.

4 Q. Who is Henry Schein, Inc.?

5 A. They are a -- a distributor of
6 pharmaceuticals.

7 Q. Yeah, they get opioids from the
8 people who make them and get them to the
9 people that sell them, right?

10 A. Yes.

11 Q. They are a distributor of
12 opioids, along with other drugs, I assume,
13 fair?

14 A. Yes.

15 MR. HAHN: Objection. Form.

16 QUESTIONS BY MR. LANIER:

17 Q. And you did a proposal for
18 consulting.

19 Do you see that?

20 A. Yes, I do.

21 Q. And consulting is what this
22 industry work you do is called. You call
23 this consulting work, don't you?

24 A. Yes.

25 Q. And so what you did is back in

1 2011 is you sent an e-mail out with a
2 proposal --

3 A. In re -- yes, I did, in
4 response to their request.

5 Q. They asked you to pitch your
6 services to them?

7 MS. MCCLURE: Form.

8 THE WITNESS: Yes.

9 QUESTIONS BY MR. LANIER:

10 Q. And then you pitched your
11 services to them?

12 A. Yes.

13 Q. Okay. So you only pitch your
14 services if they come to you first and say,
15 "Would you pitch your services"?

16 A. Yes.

17 Q. And then you send them these
18 elaborate proposals for consulting --

19 MR. EPPICH: Objection.

20 QUESTIONS BY MR. LANIER:

21 Q. -- where you talk about what
22 you will do to provide them consulting
23 services related to their due diligence
24 investigations of their current or potential
25 customers.

1 See that?

2 MS. MCCLURE: Form.

3 QUESTIONS BY MR. LANIER:

4 Q. You see that?

5 A. Yes, I see that.

6 Q. Now, that wasn't your first
7 correspondence with them. You actually say
8 you didn't pitch yourself to them, but I want
9 to give you another document and see if it
10 changes your mind.

11 I'll mark this one as Exhibit
12 Number 23.

13 (Mapes Exhibit 23 marked for
14 identification.)

15 QUESTIONS BY MR. LANIER:

16 Q. Do you have Exhibit Number 23
17 in front of you?

18 A. Yes.

19 Q. It's another e-mail, but it's
20 one that you sent out before this last
21 exhibit, correct?

22 The one we were just looking
23 at, Exhibit Number 22, was May the 10th. Oh,
24 oh, oh. No, this is afterwards. This is
25 May 26th, isn't it?

1 See that date?

2 A. Yes, I do.

3 Q. May 26, you're sending an
4 e-mail where you attach a draft of the letter
5 concerning their SOM program.

6 What does SOM stand for?

7 A. Suspicious order monitoring.

8 Q. That's what the government
9 requires these companies to do; they are to
10 monitor suspicious orders for drugs, right?

11 MR. HAHN: Objection. Form.

12 THE WITNESS: Yes.

13 QUESTIONS BY MR. LANIER:

14 Q. You said, "I have attached a
15 draft of the letter concerning that program
16 at Henry Schein. I have some background in
17 the letter about the DEA requirements, as I
18 believe I'm in a unique position to talk about
19 those requirements."

20 See that?

21 A. Yes.

22 Q. Sir, you were certainly telling
23 folks that you were the man for the job,
24 weren't you?

25 MS. MCCLURE: Form.

1 THE WITNESS: Yes.

2 (Mapes Exhibit 24 marked for
3 identification.)

4 QUESTIONS BY MR. LANIER:

5 Q. Now, I'll give you Exhibit
6 Number 24. This is a copy of your LinkedIn
7 page.

8 LinkedIn is one of these
9 Internet things where people can list their
10 information on a professional level; is that
11 right?

12 MS. MCCLURE: Form.

13 THE WITNESS: It is.

14 QUESTIONS BY MR. LANIER:

15 Q. And so we've got you, Mike
16 Mapes.

17 Did you do your own LinkedIn
18 page?

19 A. I did.

20 Q. iSAW Solutions, CEO. That
21 means you're the boss of the bosses. You are
22 the chief executive, right?

23 A. There are no other bosses, but,
24 yes, there's only two people in the company.

25 Q. You and who?

1 A. My brother.

2 Q. All right. What's your
3 brother's background and training?

4 A. He does accounting and tax
5 preparation.

6 Q. Okay. Because I was looking at
7 this, and, I mean, you hold yourself out to
8 be an expert in a lot of different areas,
9 don't you?

10 MS. MCCLURE: Form.

11 QUESTIONS BY MR. LANIER:

12 Q. You see this page, "Industry
13 Knowledge"?

14 Do you see it?

15 A. I see it.

16 Q. I mean, criminal
17 investigations? National security?
18 Litigation? Firearms?

19 MS. MCCLURE: Is there a
20 question?

21 QUESTIONS BY MR. LANIER:

22 Q. Physical security, defense --

23 MS. MCCLURE: Objection.

24 QUESTIONS BY MR. LANIER:

25 Q. -- tactics, regulatory affairs,

1 asset protection.

2 Did I read those right?

3 A. You read those -- they're on
4 the page, but those aren't things that I put
5 in.

6 Q. Do you think they just
7 automatically appear on your LinkedIn page?

8 MR. EPPICH: Objection.
9 Argumentative.

10 MS. MCCLURE: Objection.
11 Foundation.

12 THE WITNESS: I don't know
13 where they came from.

14 QUESTIONS BY MR. LANIER:

15 Q. Well, you're the one who did
16 your LinkedIn page.

17 A. Yes.

18 Q. Did you not know when you do
19 LinkedIn you have to check the areas where
20 you have expertise or industry knowledge so
21 that people know when to use you?

22 MS. MCCLURE: Form.
23 Foundation.

24 THE WITNESS: Well, I did not
25 check any of those areas.

1 QUESTIONS BY MR. LANIER:

2 Q. Do you think that they're
3 default areas that just show up on
4 everybody's LinkedIn page?

5 Because I promise you they're
6 not on mine.

7 MS. MCCLURE: Object to the
8 narrative. Form. Foundation.
9 Speculation. Argumentative.

10 THE WITNESS: No.

11 QUESTIONS BY MR. LANIER:

12 Q. I mean, you're going to consult
13 on the police? You're going to consult on --
14 well, now regulatory requirements, that's --
15 you've already shown us that, right?

16 MS. MCCLURE: Form.

17 QUESTIONS BY MR. LANIER:

18 Q. Right?

19 Regulatory requirements, that
20 one may be legit.

21 A. Yes.

22 MS. MCCLURE: Form.

23 QUESTIONS BY MR. LANIER:

24 Q. But come on, counterterrorism?

25 A. I don't know where that came

1 from.

2 Q. Huh.

3 Then there are like information
4 on the last page where you've got like
5 endorsements. Some lawyer named Daniel
6 Christopher says, "Mike" --

7 That's your first name, right?

8 A. Yes.

9 Q. -- "has the knowledge and
10 experience to solve problems and give perfect
11 outcome-oriented recommendations and
12 planning."

13 Do you see that?

14 A. I do.

15 Q. Outcome-oriented, other than
16 the fact it's not spelled right, that's what
17 these pharmaceutical companies have hired you
18 to do, give outcome-oriented recommendations.

19 You're trying to get them to
20 where they want to be, aren't you?

21 MS. MCCLURE: Objection. Form.
22 Compound. Incomplete hypothetical.
23 Foundation. Misstates the witness'
24 testimony.

25 THE WITNESS: Yes, I'm trying

1 to get them to understand the rules
2 and procedures to be in compliance.

3 QUESTIONS BY MR. LANIER:

4 Q. And that's why companies like
5 AmerisourceBergen put you into their
6 corporate charts.

7 MS. MCCLURE: Objection.
8 Leading.

9 QUESTIONS BY MR. LANIER:

10 Q. Right?

11 MS. MCCLURE: Leading.
12 Foundation.

13 THE WITNESS: I don't know why
14 they added me to their chart.

15 (Mapes Exhibit 25 marked for
16 identification.)

17 QUESTIONS BY MR. LANIER:

18 Q. Let me give you a document that
19 we'll mark as Exhibit Number 25, and it's
20 actually a set of documents that have come.

21 Gives us an idea of how the
22 company charted out the associates -- let's
23 start up here, the bold. "Associates
24 assigned to provide resources for the
25 diversion control program."

1 Do you see that?

2 MR. EPPICH: Objection.

3 Foundation.

4 THE WITNESS: Yes, I do.

5 QUESTIONS BY MR. LANIER:

6 Q. Now, understand that -- make
7 sure that we're clear on our terms here.
8 There is within the pharmaceutical world a
9 closed loop when it comes to drugs like
10 opioids. Opioids only belong within a closed
11 loop.

12 MS. MCCLURE: Objection to the
13 narrative.

14 QUESTIONS BY MR. LANIER:

15 Q. Correct?

16 A. Yeah.

17 MR. EPPICH: Objection. Form.

18 QUESTIONS BY MR. LANIER:

19 Q. And so in here you've got the
20 companies that are, I guess, importing,
21 bringing in the opium, the materials for the
22 opioids. You've got the importers.

23 You've got the companies that
24 are manufacturing the pills or the medicine,
25 whatever. You've got the manufacturers.

1 You've got the people who are
2 passing those out, the distributors.

3 And then you've got the
4 pharmacies at the end that are supposed to be
5 getting them to the sick, right?

6 MS. MCCLURE: Objection.

7 MS. SWIFT: Objection.

8 Leading.

9 MS. MCCLURE: Form.
10 Foundation. Incomplete
11 representation. Object to the
12 narrative by counsel.

13 THE WITNESS: Yes, all those
14 are registrants that would handle
15 controlled substances.

16 QUESTIONS BY MR. LANIER:

17 Q. And that's the word that you
18 were using "registrants," because they have
19 to register with the government. And if they
20 are not registered and accepted, it's illegal
21 for them to market in opioids, isn't it?

22 MS. MCCLURE: Objection. Form.

23 Leading. Foundation.

24 MS. SWIFT: Objection. Form.

25

1 QUESTIONS BY MR. LANIER:

2 Q. True?

3 A. It is illegal for them to
4 handle opioids if they're not registered,
5 yes.

6 Q. And so when we talk about
7 diversion, diversion is when these pills
8 somehow, somewhere, go outside the loop and
9 they are diverted. And instead of going to
10 properly prescribed patients, they get
11 diverted into an improper use, right?

12 MS. MCCLURE: Objection.

13 Leading. Foundation. Misstates.

14 THE WITNESS: Correct.

15 QUESTIONS BY MR. LANIER:

16 Q. Okay. So we're looking at the
17 associates that were assigned to provide
18 resources for the diversion control program,
19 the program to keep these drugs from being
20 diverted, right?

21 A. Yes.

22 Q. Because these are dangerous
23 drugs, true?

24 MS. MCCLURE: Form.

25 THE WITNESS: I don't know what

1 you mean by "dangerous."

2 QUESTIONS BY MR. LANIER:

3 Q. They can kill you?

4 MS. MCCLURE: Form.

5 QUESTIONS BY MR. LANIER:

6 Q. They can do damage to you if
7 you are taking them improperly, in an
8 improper dose at an improper time?

9 A. They could.

10 Q. They can be addictive?

11 A. Yes.

12 Q. That's dangerous to me. Is
13 that dangerous to you?

14 A. Yes.

15 Q. Okay. So we can agree these
16 are dangerous drugs?

17 A. Yes.

18 Q. All right. And so you want to
19 keep them from being diverted. And not only
20 do you want to, the distributors are required
21 by law to do a number of different things to
22 stop diversion of opioids, aren't they?

23 A. They are.

24 MS. WICHT: Object to the form.

25

1 QUESTIONS BY MR. LANIER:

2 Q. And the law they are supposed
3 to follow is what?

4 A. The Controlled Substances Act.

5 Q. And it sets out
6 responsibilities, doesn't it?

7 A. It does.

8 Q. Okay. And so here we see for
9 AmerisourceBergen in Exhibit 25 associates
10 assigned to provide resources for the
11 diversion control program, and it starts up
12 here with a vice president and an
13 administrative assistant.

14 You see all of that?

15 A. Yes.

16 Q. Look at this. Mike Mapes, DEA
17 consultant. You made their chart.

18 Did you know that?

19 MS. MCCLURE: Objection to
20 form.

21 THE WITNESS: I see that.

22 QUESTIONS BY MR. LANIER:

23 Q. And if I follow the chart
24 right, they've got you basically reporting to
25 the vice president, don't they?

1 MS. MCCLURE: Objection. Form.

2 THE WITNESS: I didn't report
3 to the vice president. It was mainly
4 with Steve Mays, the director of CSRA.

5 QUESTIONS BY MR. LANIER:

6 Q. This fellow that's lateral to
7 you on the chart?

8 A. Yes.

9 Q. So practically speaking, the
10 vice president didn't take your cares or
11 concerns. You didn't even know technically
12 you were reporting to him; is that right?

13 MS. MCCLURE: Form.

14 Foundation.

15 THE WITNESS: Practically I
16 reported to Steve Mays.

17 QUESTIONS BY MR. LANIER:

18 Q. Now, also of note here, it
19 looks like these aren't people who are just
20 fully assigned to diversion control.
21 Everyone already had a full-time job in
22 addition to doing this work; is that right?

23 MS. MCCLURE: Form.

24 Foundation. Calls for speculation.

25 THE WITNESS: I'm not aware of

1 the full-time jobs that others on the
2 chart would have.

3 QUESTIONS BY MR. LANIER:

4 Q. But do you see where it says,
5 "Everyone already has a full-time job"?

6 A. I see what that says, yes.

7 MS. MCCLURE: Objection.

8 QUESTIONS BY MR. LANIER:

9 Q. Like diversion control program,
10 that's just an afterthought. That's
11 something you do in extra time, when you got
12 a little extra time. Hey, you got a few
13 extra minutes in addition to your full-time
14 job, would you come do this critical work to
15 make sure the drugs don't get diverted?

16 MS. MCCLURE: Form. Misstates
17 the record. Foundation. Calls for
18 speculation.

19 QUESTIONS BY MR. LANIER:

20 Q. Did you know about any of that?

21 MS. MCCLURE: All of the same
22 objections.

23 THE WITNESS: No.

24 QUESTIONS BY MR. LANIER:

25 Q. And there are multiple sheets

1 to the exhibit that I've given you that are
2 just different charts that they've done over
3 the times that have you in it.

4 You worked for
5 AmerisourceBergen for a long time, didn't
6 you?

7 MS. MCCLURE: Objection.

8 Leading. Foundation.

9 Objection to the continuing
10 narrative by counsel.

11 THE WITNESS: Yes, I did.

12 QUESTIONS BY MR. LANIER:

13 Q. Okay. Now, one more thing that
14 I want to cover before we leave here is there
15 are some people you know who have been
16 designated as experts by the plaintiffs that
17 I think maybe you worked with, and I need to
18 know if you're going to say anything bad
19 about at trial.

20 You understand what I'm asking
21 you?

22 A. Yes.

23 MS. MCCLURE: Form.

24 QUESTIONS BY MR. LANIER:

25 Q. Did you work in the DEA Detroit

1 office with Jim Geldhof, who later became the
2 regional supervisor?

3 A. No.

4 Q. You did not?

5 A. We worked in the Detroit office
6 at different times.

7 Q. Okay. Do you know Jim Geldhof?

8 A. Yes.

9 Q. Good guy?

10 MS. MCCLURE: Form.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. LANIER:

13 Q. Know what he's doing?

14 A. Yes.

15 Q. Honest?

16 MS. MCCLURE: Form.

17 THE WITNESS: As far as I know.

18 QUESTIONS BY MR. LANIER:

19 Q. Reliable?

20 MS. MCCLURE: Form.

21 THE WITNESS: As far as I know.

22 QUESTIONS BY MR. LANIER:

23 Q. All right. Jim Rafalski, who
24 did the ARCOS and field analysis work, do you
25 know Jim Rafalski?

1 A. I know the name more than I
2 know the person.

3 Q. All right.

4 A. I may have met him a couple of
5 times.

6 Q. You're not able to comment on
7 him --

8 A. No.

9 Q. -- one way or the other.
10 The jury is also going to hear
11 from Joe Rannazzisi.

12 You know Joe Ran, don't you?

13 A. Yes.

14 Q. Good man?

15 MS. MCCLURE: Form.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. LANIER:

18 Q. Honest?

19 A. Yes.

20 Q. Reliable?

21 A. Yes.

22 Q. Okay. We are through the first
23 stop on your roadmap, personal background.

24 Next stop, DEA.

25 The DEA stop is going to take

1 about an hour or so. We've been going
2 54 minutes.

3 Are you good to keep going?

4 A. Yes.

5 Q. Okay.

6 MS. LEVY: While we're in
7 transition, can we ask the court reporter if
8 she can refresh the realtime?

9 MR. LANIER: Let's go off the
10 record for you to refresh the
11 realtime, and I'm going to run down
12 the hall to use the restroom.

13 (Off the record at 8:55 a.m.)

14 VIDEOGRAPHER: We're going back
15 on record. Beginning of Media File 3.
16 The time is 9:03.

17 QUESTIONS BY MR. LANIER:

18 Q. Mr. Mapes, we have finished
19 that first stop on my roadmap of your
20 personal background.

21 You with me?

22 A. Yes.

23 Q. And now I want to ask you about
24 questions and subjects that were asked of you
25 yesterday by the lawyers for the various

1 companies.

2 Okay?

3 A. Yes.

4 Q. And I've divided them up into
5 two different areas: those matters that
6 arose while you were working for the DEA, and
7 those matters that arose generally while
8 you've been doing industry work.

9 Okay?

10 A. Okay.

11 Q. And so our first stop are the
12 matters while you were working with the DEA.

13 A. Okay.

14 Q. Now, in this regard, we'll
15 focus in on the DEA time. We'll keep a
16 little running list of notes for this stop,
17 but in general you covered a number of
18 different subjects that came up yesterday,
19 and I kind of want to isolate each one and
20 talk about them.

21 Okay?

22 A. Okay.

23 Q. So one subject that you talked
24 about a lot was Internet pharmacy issues.

25 Correct?

1 A. Yes.

2 Q. And so these are pharmacies
3 that exist somehow on the worldwide web more
4 than they do, you know, in a building down
5 the street.

6 MS. MCCLURE: Form.

7 MR. LANIER: That's supposed to
8 be a keyboard and a monitor. I'm not
9 very good at this, am I?

10 MS. MCCLURE: Objection. Form.
11 Narrative.

12 MR. LANIER: Bad art.

13 QUESTIONS BY MR. LANIER:

14 Q. Internet pharmacies. That's
15 different than a storefront pharmacy, right?

16 A. It's different in that it's a
17 website that refers people to a doctor and a
18 storefront pharmacy.

19 Q. To go pick up their pills?

20 A. Or have them delivered, yes.

21 Q. All right. Now, the Internet
22 pharmacy issues that you talked about
23 yesterday, can we agree that this became a
24 huge problem as part of the opioid mess?

25 MR. BENNETT: Objection.

1 Vague.

2 QUESTIONS BY MR. LANIER:

3 Q. Would you agree with me?

4 MR. EPPICH: Objection to form.

5 THE WITNESS: I don't recall it
6 being part of the opioid issue,
7 because the majority of the drugs
8 being dispensed from pharmacies that
9 were related to the Internet were not
10 opioids. They were phentermine and
11 benzodiazepines and those kinds of
12 things.

13 QUESTIONS BY MR. LANIER:

14 Q. So you're not aware of how many
15 opioids were actually being dispensed by
16 these Internet pharmacies?

17 A. There were some, but it wasn't
18 the major part of the pharmacies in the
19 beginning.

20 Q. Interesting.
21 So you believe that the
22 Internet pharmacy problem was more than
23 simply an opioid problem; it applied to other
24 drugs as well?

25 MS. MCCLURE: Form. Misstates

1 the witness' testimony.

2 QUESTIONS BY MR. LANIER:

3 Q. Fair?

4 A. Yes, it did.

5 Q. But it was a huge problem. It
6 was one that required direct attention,
7 right?

8 A. Yes.

9 MS. MCCLURE: Form.

10 QUESTIONS BY MR. LANIER:

11 Q. And in that regard, sir, I got
12 to ask you: Where were these pharmacies
13 getting their drugs?

14 MS. MCCLURE: Form.

15 QUESTIONS BY MR. LANIER:

16 Q. Whether they were opioids or
17 the benzodiazepines or whatever they were,
18 where were they getting them from?

19 MS. MCCLURE: Form.

20 MR. EPPICH: Objection.

21 Foundation.

22 THE WITNESS: From registered
23 wholesalers.

24 QUESTIONS BY MR. LANIER:

25 Q. Are those what we call

1 distributors?

2 A. Yes.

3 Q. Those are companies like
4 AmerisourceBergen?

5 MS. MCCLURE: Form.

6 QUESTIONS BY MR. LANIER:

7 Q. McKesson? Cardinal?

8 A. Yes, they're distributors.

9 Q. I mean, those are in our --
10 going back to our picture drawing, those are
11 these people who take them from the
12 manufacturers and get them to the pharmacies,
13 right?

14 A. That's correct.

15 Q. And so you've got this huge
16 problem with these Internet pharmacies. The
17 pharmacies are getting their drugs from the
18 distributors.

19 My question to you is: Did the
20 major distributors bring this problem to the
21 DEA's attention?

22 A. No.

23 Q. You mean McKesson didn't tell
24 y'all about this?

25 MS. MCCLURE: Form.

1 MR. EPPICH: Object to the
2 form.

3 MS. MCCLURE: Scope.

4 MR. BENNETT: I'm going to join
5 the scope objection.

6 You can answer that question
7 yes or no only.

8 THE WITNESS: No.

9 QUESTIONS BY MR. LANIER:

10 Q. AmerisourceBergen didn't say,
11 "Hey, we figured out there's a big problem
12 out there where there's a diversion issue
13 that's occurring with these Internet
14 pharmacies."

15 You didn't get that huge alert
16 from AmerisourceBergen?

17 MS. MCCLURE: Form. Compound.
18 Scope.

19 MR. BENNETT: Objection.
20 Scope.

21 You can answer that question
22 yes or no only.

23 THE WITNESS: No.

24 QUESTIONS BY MR. LANIER:

25 Q. From Cardinal?

1 MS. MCCLURE: Form.

2 Foundation. Scope.

3 MR. BENNETT: Same objection.

4 Same instruction.

5 THE WITNESS: No.

6 QUESTIONS BY MR. LANIER:

7 Q. Well, aren't these distributors
8 required under law to know their customers?

9 MR. EPPICH: Objection. Form.

10 MS. MCCLURE: Form.

11 MR. EPPICH: Calls for a legal
12 conclusion.

13 MS. SWIFT: Foundation.

14 QUESTIONS BY MR. LANIER:

15 Q. Let me reask it.

16 Haven't you preached
17 vociferously, stridently, strongly, loudly,
18 clearly, that the distributors are required
19 to know their customers?

20 MS. MCCLURE: Form. Compound.

21 MR. EPPICH: Object to the
22 form.

23 THE WITNESS: Yes, and that
24 started with the Distributor
25 Initiative, mostly.

1 QUESTIONS BY MR. LANIER:

2 Q. Well, you say it started there.

3 The obligation for them to know
4 their customers didn't start there. This --
5 did it?

6 MR. EPPICH: Objection.

7 MS. MCCLURE: Form.

8 Argumentative. Leading.

9 MS. SWIFT: Foundation.

10 MR. EPPICH: Objection. Form.

11 Calls for a legal conclusion.

12 THE WITNESS: No, the
13 regulations did not change.

14 QUESTIONS BY MR. LANIER:

15 Q. Right.

16 That law that closes this loop,
17 that requires the distributors to only give
18 to registered and approved pharmacies for
19 legitimate purposes to stop diversion. I
20 mean, knowing their customers, knowing the
21 pharmacies, that's diversion control 101,
22 isn't it?

23 MS. MCCLURE: Form. Narrative

24 by counsel. Foundation. Leading.

25 Misstates. Calls for a legal

1 conclusion.

2 THE WITNESS: Yes, it's basic.

3 MS. MCCLURE: And again,
4 continuing objection to counsel's
5 filling in information on a sheet of
6 paper implying that it comes from the
7 witness before providing the
8 information through counsel.

9 MR. LANIER: If it helps you,
10 I've had at least one judge -- two
11 judges, two federal judges, tell me I
12 have to do that because otherwise it
13 consumes too much time. I don't know
14 if that helps you.

15 MS. MCCLURE: Well, we don't
16 have any such ruling here, so it
17 doesn't help me, and I continue to
18 maintain all of those objections.

19 MR. LANIER: I'll give you a
20 running objection on that so you don't
21 consume my time continuing to say it.

22 MS. MCCLURE: Great.

23 QUESTIONS BY MR. LANIER:

24 Q. Internet pharmacy concerns.

25 Let's talk about what some of the concerns

1 were.

2 Okay?

3 A. Okay.

4 Q. First of all, we know the law
5 is the law is the law.

6 MS. MCCLURE: Form.

7 QUESTIONS BY MR. LANIER:

8 Q. Fair?

9 MR. BENNETT: Objection.

10 Vague.

11 MR. EPPICH: Form. Vague.

12 QUESTIONS BY MR. LANIER:

13 Q. Let me be more clear. Some
14 people don't understand what I mean.

15 This law for the Controlled
16 Substances Act, that doesn't apply just to
17 Internet pharmacies, does it?

18 MR. EPPICH: Objection. Form.

19 THE WITNESS: It applies to all
20 handlers of controlled substances.

21 QUESTIONS BY MR. LANIER:

22 Q. Yeah. There's not a -- where's
23 the note I just used?

24 Aren't distributors required to
25 know their customers, diversion control 101,

1 that's not only applicable to Internet
2 pharmacies; it applies to all their
3 customers, doesn't it?

4 MS. SWIFT: Objection. Form.

5 MS. MCCLURE: Form. Compound.

6 MS. WICHT: Foundation.

7 Mischaracterizes testimony.

8 THE WITNESS: It applies to all
9 registrants, yes.

10 QUESTIONS BY MR. LANIER:

11 Q. Yeah. Everybody in the loop,
12 right?

13 A. Yes.

14 Q. And so when the lawyers talked
15 to you about these Internet pharmacy
16 concerns, let's just make real clear that the
17 law that we're talking about is -- the same
18 law applies to all pharmacies, whether
19 they're Internet or not.

20 MR. EPPICH: Objection to form.

21 QUESTIONS BY MR. LANIER:

22 Q. True?

23 MR. EPPICH: Objection to form,
24 vague, and calls for a legal
25 conclusion.

1 MS. MCCLURE: Leading.

2 MR. BENNETT: You can answer.

3 THE WITNESS: It does.

4 QUESTIONS BY MR. LANIER:

5 Q. I mean, there's no special law
6 for Internet pharmacies, right?

7 MS. MCCLURE: Form.

8 THE WITNESS: There is a
9 separate registration category for
10 Internet pharmacies, so there are some
11 unique rules for Internet pharmacies.

12 QUESTIONS BY MR. LANIER:

13 Q. No fuss about that at all.

14 But in terms of the opioid loop
15 and what the distributors have to do, there's
16 no special law for distributors that pertains
17 to how they treat Internet pharmacies versus
18 others, is there?

19 MS. MCCLURE: Form.

20 THE WITNESS: No.

21 QUESTIONS BY MR. LANIER:

22 Q. And I've got to ask you, these
23 rogue Internet pharmacies -- that's a term we
24 heard yesterday with you and the distributor
25 lawyers, or maybe -- yes.

1 How do these rogue Internet
2 pharmacies get their pills historically?

3 A. Well, all pharmacies get them
4 from wholesalers, from the distributors.

5 Q. Are we supposed to believe that
6 AmerisourceBergen, Cardinal and McKesson
7 can't figure out a fake pharmacy?

8 MS. MCCLURE: Objection.
9 Leading.

10 MR. EPPICH: Objection.

11 MS. MCCLURE: Form.
12 Foundation. Argumentative.

13 THE WITNESS: I don't know.

14 QUESTIONS BY MR. LANIER:

15 Q. I mean, have you heard the
16 expression "ignorance is no excuse"?

17 A. Yes.

18 Q. I mean, if you get pulled over
19 for speeding, do you get out of it if you
20 say, "Hey, I'm sorry, it's not my fault; I
21 wasn't looking at my speedometer"?

22 You can't get out of it that
23 way, can you?

24 MS. MCCLURE: Form.

25 THE WITNESS: I don't know.

1 QUESTIONS BY MR. LANIER:

2 Q. Have you ever tried that one?

3 A. No, I haven't.

4 Q. I'll bet you don't ever try
5 that one either.

6 I mean, that one is just not
7 going to work now, Mr. Mapes, is it?

8 MS. MCCLURE: Form.

9 QUESTIONS BY MR. LANIER:

10 Q. Would you expect it to?

11 MS. MCCLURE: Form.

12 THE WITNESS: I don't know.

13 QUESTIONS BY MR. LANIER:

14 Q. Now, AmerisourceBergen had a
15 meeting with you concerning these Internet
16 pharmacies, and we got Exhibit Number 7 that
17 was handed to us yesterday as part of that
18 meeting, correct?

19 A. That's correct.

20 Q. You had an Internet
21 presentation with AmerisourceBergen,
22 August 10, 2005, and you wrote it up.

23 MS. MCCLURE: Form.

24 THE WITNESS: Actually, someone
25 else wrote it up, but I signed it,

1 yes.

2 QUESTIONS BY MR. LANIER:

3 Q. Okay. And a point was made
4 yesterday by the lawyer for
5 AmerisourceBergen, Ms. McClure, that after
6 the presentation, Mr. Mays --

7 Do you see that?

8 A. Yes, I do.

9 Q. And that's the same Mr. Mays
10 that you wound up reporting to when you went
11 to work for AmerisourceBergen --

12 A. Correct.

13 Q. -- two years later?

14 MS. MCCLURE: Form.

15 QUESTIONS BY MR. LANIER:

16 Q. So two years before you went to
17 work for him, he informed representatives of
18 the DEA that AmerisourceBergen does not want
19 to be associated with this type of illegal
20 activities, and it reviews its customers
21 thoroughly before engaging in business with
22 them.

23 Do you see that?

24 A. I do.

25 Q. Now, I asked you before if

1 distributors were required to know their
2 customers, and you said, "Well, that's what
3 it ultimately worked into, but they didn't
4 always do that earlier."

5 Do you remember that?

6 A. Yes.

7 Q. And I said, "But the law has
8 always been that way," right?

9 MS. MCCLURE: Form. Calls for
10 a legal conclusion.

11 THE WITNESS: It has.

12 QUESTIONS BY MR. LANIER:

13 Q. And we see that here, that
14 AmerisourceBergen was trying to tell you or
15 the DEA that they were, in fact, reviewing
16 their customers thoroughly before engaging in
17 business with them, and they don't want to be
18 associated with this type of illegal
19 activity.

20 Do you see that?

21 A. I do.

22 Q. Now this, sir, shows us -- let
23 me go back to this.

24 So AmerisourceBergen, you have
25 this meeting with them. If we look

1 thoroughly at Exhibit Number 7, it shows the
2 glaring problems with the way Amerisource was
3 doing business, doesn't it?

4 MS. MCCLURE: Objection.

5 Leading. Foundation. Form.

6 THE WITNESS: It shows examples
7 that we use to -- to them about what
8 we considered Internet pharmacies that
9 they had distributed to.

10 QUESTIONS BY MR. LANIER:

11 Q. Well, it not only does that,
12 sir, but it says in very plain English, the
13 purpose of your meeting with them was "to
14 address the illegal" --

15 Do you see that word?

16 A. Yes.

17 Q. -- "the illegal domestic
18 Internet pharmacy problem and their source of
19 supply."

20 Do you see that as well?

21 A. I do.

22 Q. The source of their supply, if
23 we're telling the whole truth, was
24 AmerisourceBergen, among others, true?

25 MS. MCCLURE: Objection to

1 form. Leading. Speculation.

2 Foundation.

3 THE WITNESS: Yes, in these

4 examples.

5 QUESTIONS BY MR. LANIER:

6 Q. Yeah.

7 In other words,

8 AmerisourceBergen may have language where

9 they tell you, "Oh, look, we don't want to be

10 associated with this. We review our

11 customers thoroughly before engaging in

12 business with them."

13 They say that to the DEA. You

14 see?

15 A. Yes.

16 Q. And the lawyer for

17 AmerisourceBergen has you look at that for

18 the jury and -- you remember?

19 A. Yes.

20 Q. And she said, "And if there was

21 any other information, it would be course of

22 practice to put it into this memo so we can

23 trust that reasonably this is all the

24 information that there was."

25 MS. MCCLURE: Form.

1 QUESTIONS BY MR. LANIER:

2 Q. Right?

3 A. Yes, that's what she said.

4 Q. Do you have the expression --
5 there's a lot of different ones. You know,
6 it's one thing to say one thing, but the
7 truth isn't always what people say.

8 Right?

9 MS. MCCLURE: Form. Leading.

10 THE WITNESS: That's correct.

11 QUESTIONS BY MR. LANIER:

12 Q. You've heard the expression "I
13 want to see someone walk the walk instead of
14 talk the talk"?

15 A. Yes.

16 Q. Or "practice what they preach"?

17 A. Yes.

18 (Mapes Exhibit 26 marked for
19 identification.)

20 QUESTIONS BY MR. LANIER:

21 Q. Okay. And the reason I'm
22 asking that is because I've looked at Exhibit
23 Number 26. I want to give a copy of it to
24 you and the lawyers around the room, a chance
25 for the jury to see it.

1 Do you have Exhibit Number 26
2 in front of you?

3 A. I do.

4 Q. See --

5 MR. BENNETT: Counsel, may he
6 have a moment to finish reviewing the
7 document?

8 MR. LANIER: Yeah. The only
9 part that I need to ask you about
10 initially is the very bottom e-mail
11 from you. It says, "Michael R.
12 Mapes," and it's a real short, little
13 e-mail.

14 So if you'll review it, and in
15 the interest of time I'll read it to
16 the jury at the same time you're
17 reading it.

18 QUESTIONS BY MR. LANIER:

19 Q. Do you see that e-mail from you
20 down at the bottom?

21 A. Yes.

22 Q. "Steve, at the meeting at
23 DEA" --

24 And that Steve is Steve Mays?
25 He's the fellow you ultimately started

1 working for a couple years later?

2 MS. MCCLURE: Form.

3 QUESTIONS BY MR. LANIER:

4 Q. Right?

5 A. Yes.

6 Q. "Steve, at the meeting at DEA,
7 I was not sure if your company had sold
8 controlled substances to any of the
9 pharmacies that were used as examples in the
10 presentation. We checked ARCOS" --

11 What is ARCOS?

12 A. It's a system that collects
13 data from registrants concerning sales of
14 Schedule II and III narcotic drugs.

15 Q. It is a system you guys have
16 that will get all of the information about
17 who's selling the drugs and who they're
18 selling them to?

19 A. Yes.

20 Q. All right. "We checked the
21 system that collects info on drug sales,
22 ARCOS, and found you made several sales to
23 Example Number 2 on page 10 of the printed
24 presentation. It's a Florida pharmacy that's
25 now out of business. Your sales were mostly

1 hydrocodone products."

2 That's an opiate drug, isn't
3 it?

4 A. It is.

5 Q. So while the lawyer will show
6 you and the jury that Mr. Mays informed you
7 guys that they didn't want to be associated
8 with this type of illegal activity and they
9 reviewed their customers thoroughly, the
10 truth of the matter is, y'all went back and
11 checked and AmerisourceBergen was, in fact,
12 supplying drugs to this illegal, domestic
13 Internet pharmacy problem, correct?

14 MS. MCCLURE: Form.

15 Foundation. Leading.

16 MR. BENNETT: Objection.

17 Scope.

18 You can answer that question
19 yes or no only.

20 THE WITNESS: Yes.

21 QUESTIONS BY MR. LANIER:

22 Q. And you said that the Internet
23 pharmacy problem was not generally opioids,
24 it was more benzo drugs, but this was mostly
25 opioid.

1 MS. MCCLURE: Form. Leading.

2 QUESTIONS BY MR. LANIER:

3 Q. Wasn't it?

4 A. Yes.

5 Q. So we can look at the entire
6 story and see that AmerisourceBergen's
7 business included the illegal Internet
8 pharmacies that were subject to your
9 investigation on the issue of opioids, true?

10 MR. BENNETT: Form.

11 Foundation. Leading.

12 THE WITNESS: It included one
13 of the Internet pharmacies that we
14 used as an example in the
15 presentations, yes.

16 QUESTIONS BY MR. LANIER:

17 Q. And you don't know whether or
18 not the DEA checked on the other example
19 y'all used, do you?

20 MS. MCCLURE: Form.

21 Mischaracterizes the document.

22 THE WITNESS: I believe that's
23 the only one of the examples in the
24 presentation that AmerisourceBergen
25 had distributed to.

1 QUESTIONS BY MR. LANIER:

2 Q. And you have three examples in
3 the presentation. So you've got
4 AmerisourceBergen on one-third of them?

5 A. Yes.

6 Q. Okay. Still on the subject of
7 Internet pharmacies.

8 You met with McKesson on the
9 Internet pharmacies, didn't you?

10 A. Yes.

11 Q. McKesson is another one of
12 these distributors, correct?

13 A. Yes, they are a distributor.

14 Q. And McKesson was participating
15 in the problem, too, weren't they?

16 MR. EPPICH: Objection to the
17 form. Foundation. Vague.

18 MS. MCCLURE: Leading.

19 MR. BENNETT: Objection.

20 Vague. Objection. Scope.

21 QUESTIONS BY MR. LANIER:

22 Q. The question pending is,
23 McKesson was participating in the problem,
24 too, true?

25 MR. EPPICH: Same objections.

1 THE WITNESS: I don't know to
2 what extent they were involved in
3 distributing to any of the pharmacies
4 that are in the examples here.

5 QUESTIONS BY MR. LANIER:

6 Q. All right. Well, you've seen
7 Exhibit Number 8, which is the presentation
8 that y'all did -- write-up of the
9 presentation that y'all did with McKesson,
10 September 1 of 2005, correct?

11 A. Yes.

12 (Mapes Exhibit 27 marked for
13 identification.)

14 QUESTIONS BY MR. LANIER:

15 Q. And then if we want to take it
16 a step further, I'll give you a document that
17 we'll mark as Exhibit Number 27.

18 And Exhibit Number 27 -- do you
19 have it in front of you?

20 A. I do.

21 Q. -- is one where -- take a
22 moment and look at it, but I'll show you the
23 part that I'm interested in so it saves
24 everybody some time.

25 It talks about John Gilbert,

1 the legal counsel for McKesson, representing
2 McKesson, contacting you and Kyle Wright,
3 responding to questions about sales of
4 controlled substances by McKesson to six
5 Internet pharmacies that were located in the
6 Miami field division.

7 And then I'm specifically going
8 to ask you about this. You'll see it
9 references that they were briefed -- McKesson
10 was briefed by the DEA on September 1st of
11 2005, and the ARCOS report for the month of
12 October revealed that McKesson distribution
13 center in Lakeland, Florida, distributed over
14 2 million dosage units of hydrocodone --

15 Now, that's an opioid, right?

16 A. Yes, it is.

17 Q. -- to six suspected illicit
18 Internet pharmacies. They even filed
19 suspicious order reports involving these same
20 pharmacies but still distributed them.

21 Do you see that?

22 A. I do.

23 Q. Does that help refresh your
24 recollection of whether or not McKesson was
25 participating in this problem of Internet

1 pharmacies as well, illegal Internet
2 pharmacies?

3 MR. EPPICH: Objection to form.
4 Characterization.

5 THE WITNESS: It does.

6 QUESTIONS BY MR. LANIER:

7 Q. And in fact, were they
8 participating in the problem? Is that true?

9 MR. EPPICH: Objection to form.
10 Vague. Foundation.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. LANIER:

13 Q. And the McKesson lawyer, if we
14 look at the whole truth, he never showed you
15 that follow-up document, did he?

16 MR. EPPICH: Objection.
17 Argumentative.

18 THE WITNESS: Which
19 follow-up --

20 QUESTIONS BY MR. LANIER:

21 Q. The one that I had to show you
22 because you couldn't remember whether or not
23 McKesson contributed to this problem. And I
24 showed you Exhibit 27.

25 MR. EPPICH: Objection. Form.

1 Misstates testimony.

2 QUESTIONS BY MR. LANIER:

3 Q. You'd never been shown that
4 before, had you?

5 MR. EPPICH: Objection. Form.

6 Misstates testimony.

7 THE WITNESS: No, I had not.

8 QUESTIONS BY MR. LANIER:

9 Q. And so now that you see it and
10 see the whole truth, you've got an ability to
11 determine whether or not McKesson was
12 participating, fair?

13 A. Yes.

14 Q. All right. Now, one other
15 thing I found interesting. When the lawyer
16 for McKesson was asking you questions, he
17 said, "You would typically note in the
18 meeting," and he referenced the meeting
19 notes, "if more had been said that meeting."

20 MR. EPPICH: Objection.

21 Misstates.

22 QUESTIONS BY MR. LANIER:

23 Q. He was talking about Exhibit
24 Number 7.

25 Do you recall that?

1 MR. EPPICH: Objection.

2 Misstates testimony.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. LANIER:

5 Q. And in truth of fact, he's
6 probably right. If something significant had
7 been said at the meeting, y'all would have
8 noted it, true?

9 MR. EPPICH: Objection.

10 Misstates. Leading. Form.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. LANIER:

13 Q. Which tells us that the
14 distributor did not confess to the problem at
15 the meeting.

16 MR. EPPICH: Objection.

17 QUESTIONS BY MR. LANIER:

18 Q. Because McKesson -- if McKesson
19 had said, "Hey, we're doing this," or "We're
20 selling with blinders on and we're not
21 looking," or "We hadn't been following this
22 stuff," or "We haven't been checking for
23 diversion the way the law says," if they had
24 told you at the meeting, you surely would
25 have noted it, wouldn't you?

1 MR. EPPICH: Objection to the
2 form. Misstates testimony.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. LANIER:

5 Q. So they didn't tell you that at
6 the meeting, we can surmise. Y'all had to go
7 dig it out from all of the files that you've
8 got in the ARCOS data, as you call it, right?

9 A. Yes.

10 MR. EPPICH: Objection to form.

11 QUESTIONS BY MR. LANIER:

12 Q. In fact, McKesson not only did
13 it, but y'all wound up sending them a show
14 cause order, didn't you?

15 MS. MCCLURE: Scope.

16 THE WITNESS: I don't recall if
17 there was one.

18 QUESTIONS BY MR. LANIER:

19 Q. There was at least discussion
20 of one. I think I may be one when I say "one
21 issued."

22 There was discussion of a show
23 cause order, right?

24 MR. EPPICH: Objection.

25 Foundation. Form.

1 QUESTIONS BY MR. LANIER:

2 Q. Did you know that when that
3 lawyer was asking you questions yesterday,
4 that there had been a discussion of a show
5 cause order?

6 MS. WICHT: Scope.

7 MR. EPPICH: I'll object to the
8 scope and form.

9 QUESTIONS BY MR. LANIER:

10 Q. Can you answer the question,
11 please?

12 A. I'm reading through it.

13 Q. That's coming up for the next
14 question. First answer the one pending,
15 please.

16 A. It had been mentioned at a
17 meeting with McKesson as of -- as a possible
18 sanction.

19 (Mapes Exhibit 28 marked for
20 identification.)

21 QUESTIONS BY MR. LANIER:

22 Q. Yeah.

23 I've just handed you Exhibit
24 Number 28.

25 Well, let's -- I don't think in

1 light of your answer that I need to deal with
2 that exhibit, so you can set it aside. We'll
3 come back to it if we need to.

4 I mean, ultimately the Lakeland
5 problem is what led to a \$13 million
6 settlement between McKesson and the US
7 Department of Justice, or the DEA, in 2008.

8 Did you know that?

9 MR. EPPICH: Objection to form.
10 Misstates facts.

11 THE WITNESS: No, I didn't -- I
12 wasn't aware of everything that led to
13 the settlement because I had retired
14 prior to that.

15 QUESTIONS BY MR. LANIER:

16 Q. Did you ever see the settlement
17 and release agreement?

18 A. I did not.

19 (Mapes Exhibit 29 marked for
20 identification.)

21 QUESTIONS BY MR. LANIER:

22 Q. I'll hand it to you -- a copy
23 of it to you marked as Exhibit Number 29.
24 It's long. I don't need you to -- you're
25 welcome to go through the whole thing, but I

1 want to direct your attention specifically to
2 the background section. Just right there at
3 the start.

4 August 4, 2006, you were still
5 at the DEA at that time, weren't you?

6 A. I was.

7 Q. By its deputy administrator,
8 Joseph T. Rannazzisi, issued an order to show
9 cause to McKesson with respect to its
10 Lakeland distribution center in Lakeland,
11 Florida.

12 Do you see that?

13 A. I do.

14 Q. Order number 1 alleged, among
15 other things, that "McKesson failed to
16 maintain effective controls at the Lakeland
17 facility against diversion of particular
18 controlled substances."

19 Do you see that as well?

20 A. I do.

21 MR. EPPICH: Objection. Form.

22 QUESTIONS BY MR. LANIER:

23 Q. And then it says that,
24 "Whereas, on November 1, 2007, Mr. Rannazzisi
25 issued a second order to show cause to

1 McKesson with respect to its Landover
2 distribution in Maryland for failing to
3 maintain effective controls."

4 Did you see that as well?

5 MR. EPPICH: Objection. Form.
6 Foundation.

7 THE WITNESS: Yes, I see that.

8 QUESTIONS BY MR. LANIER:

9 Q. Now, when defendants fail to
10 maintain effective control, is that a good
11 thing or a bad thing?

12 MR. EPPICH: Objection. Form.

13 THE WITNESS: It's a bad thing.

14 QUESTIONS BY MR. LANIER:

15 Q. Why?

16 A. Because that may allow drugs to
17 be diverted.

18 Q. And then I've got to fill in
19 the blank here on my question for you.

20 In response to the questions by
21 the lawyer from McKesson, "If more had been
22 said at the meetings of note, it would have
23 been noted," no distributor confessed.

24 That's true, isn't it?

25 MS. MCCLURE: Objection. Form.

1 Misstates testimony. Argumentative.

2 MR. EPPICH: I'll join in those
3 objections. Foundation. Vague.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. LANIER:

6 Q. Okay. Next. All of the -- let
7 me do it this way.

8 The questions that I've asked
9 you about Internet pharmacies, as far as
10 Cardinal Health is concerned, you also met
11 with them, right?

12 A. With counsel for Cardinal
13 Health, yes.

14 Q. And we have the notes from that
15 as Exhibit Number 9 that we looked at
16 yesterday, correct?

17 MS. WICHT: Object to form.

18 THE WITNESS: Yes, that is
19 correct.

20 QUESTIONS BY MR. LANIER:

21 Q. And Cardinal Health never
22 confessed to having problems?

23 MS. WICHT: Object to form.

24 QUESTIONS BY MR. LANIER:

25 Q. Did they?

1 MS. WICHT: I'm sorry. Object
2 to form, foundation and vague.

3 THE WITNESS: They did not.

4 QUESTIONS BY MR. LANIER:

5 Q. And yet you know Cardinal
6 Health was also trafficking in the pills to
7 the Internet pharmacies that were illegal or
8 illicit, right?

9 MS. WICHT: Object to form.
10 Foundation. Vague. Argumentative.

11 THE WITNESS: They were selling
12 pills to pharmacies, yes.

13 QUESTIONS BY MR. LANIER:

14 Q. Failing to maintain effective
15 controls against diversion, true?

16 MS. WICHT: Object to form.
17 Foundation. Calls for a legal
18 conclusion. Leading. Object to the
19 improper demonstrative.

20 THE WITNESS: Yes.

21 (Mapes Exhibit 30 marked for
22 identification.)

23 QUESTIONS BY MR. LANIER:

24 Q. Okay. Now, if we want to see
25 specifically some of what you've done, I

1 found a color set we can show the jury of
2 your presentation. I think the record will
3 reflect in the exhibit, it's Exhibit 30. I'm
4 marking it now. That this is the one that
5 you gave to AmerisourceBergen.

6 But your presentation was
7 basically the same to each of these
8 distributors, true?

9 MS. MCCLURE: Asked and
10 answered.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. LANIER:

13 Q. So Exhibit 30 is the actual
14 data.

15 And you told these folks about
16 these Internet issues, but the Internet
17 issues had been around for years before this
18 meeting, hadn't they?

19 MS. MCCLURE: Form.
20 Foundation. Misstates the witness'
21 testimony.

22 THE WITNESS: I'm not certain
23 what time the Internet issues started.

24 QUESTIONS BY MR. LANIER:

25 Q. Well, look on Slide 9.

1 The Internet policy, at least,
2 that you reference --

3 MR. BENNETT: Hang on a second,
4 Counsel. He's trying to find --

5 MR. LANIER: Oh, yeah, because
6 they're not numbered.

7 QUESTIONS BY MR. LANIER:

8 Q. So it's the one that says "DEA
9 Internet policy."

10 Do you see that?

11 A. I do.

12 Q. The Internet policy was 2001,
13 the policy that you said was specific for the
14 Internet registration issues, right?

15 A. No, I believe that's the policy
16 about prescriptions being issued by a doctor
17 acting in the usual course of professional
18 practice, not specifically relating to
19 Internet.

20 Q. Okay. So the 2001 is not the
21 Internet policy date?

22 A. No.

23 Q. Thank you. That helps clarify.

24 If you will flip to page 21,
25 it's the slide entitled -- the first one

1 entitled "Suspicious Orders." Several slides
2 have that title.

3 Do you see it?

4 A. Yes.

5 Q. Now, the suspicious orders --
6 21 CFR means the Code of Federal Regulations.
7 That's the regulations that have been enacted
8 that have the authority of law, right?

9 MS. MCCLURE: Leading.

10 THE WITNESS: Correct.

11 QUESTIONS BY MR. LANIER:

12 Q. 1301.74, that's part of what
13 was asked you about yesterday, correct?

14 A. That's correct.

15 Q. It requires that the
16 registrants design and operate a system to
17 identify suspicious orders.

18 Do you see that?

19 A. Yes.

20 Q. And registrants here are these
21 distributors in our closed-loop drawing,
22 correct?

23 MS. MCCLURE: Form.

24 Foundation. Misstates.

25 THE WITNESS: Yes, among

1 others.

2 QUESTIONS BY MR. LANIER:

3 Q. Yeah, you've got to register
4 also as a manufacturer and a pharmacist, but
5 this requirement to identify suspicious
6 orders, you were specifically talking at that
7 point in time to the distributors, fair?

8 MS. MCCLURE: Leading.

9 THE WITNESS: Yes.

10 QUESTIONS BY MR. LANIER:

11 Q. And this law that requires that
12 they design and operate a system to identify
13 these suspicious orders had been in effect
14 since when?

15 MS. MCCLURE: Form. Calls for
16 a legal conclusion.

17 THE WITNESS: I don't know when
18 that regulation first was in effect.

19 QUESTIONS BY MR. LANIER:

20 Q. But it was the 1970s, wasn't
21 it?

22 MS. MCCLURE: Leading.

23 THE WITNESS: I believe so.

24 QUESTIONS BY MR. LANIER:

25 Q. And this is the same law that

1 requires them to report suspicious orders to
2 the DEA when discovered, fair?

3 MS. MCCLURE: Form. Calls for
4 a legal conclusion.

5 THE WITNESS: It is.

6 QUESTIONS BY MR. LANIER:

7 Q. So this is the company's
8 requirement to design and operate the system.
9 It's not the DEA's job --

10 MS. MCCLURE: Same objection.

11 QUESTIONS BY MR. LANIER:

12 Q. -- right?

13 A. That's correct.

14 Q. And then on suspicious orders,
15 report -- the next slide, "Reporting a
16 suspicious order to the DEA does not" --

17 And you put that in all caps
18 for your presentation, didn't you?

19 A. Yes.

20 Q. -- "does not relieve the
21 distributor of the responsibility to maintain
22 effective controls."

23 You can't just report the
24 suspicious order; you still have to maintain
25 effective controls, don't you?

1 A. Yes.

2 Q. Because it's the distributor's
3 decision whether or not they're going to ship
4 those suspicious drugs or not, isn't it?

5 MS. MCCLURE: Form. Leading.

6 THE WITNESS: Yes.

7 QUESTIONS BY MR. LANIER:

8 Q. And that's your next slide.
9 You said, "The DEA cannot tell a distributor
10 if an order is legitimate or not. The
11 distributor must determine which orders are
12 suspicious and then make a sales decision."

13 Correct?

14 MR. EPPICH: Objection.

15 Misstates the document.

16 THE WITNESS: Correct.

17 QUESTIONS BY MR. LANIER:

18 Q. Now, that's kind of a weird
19 thing, but let's -- at the risk of stating
20 the obvious, every drug the distributor
21 sells, the distributor's making money on that
22 transaction, right?

23 MS. MCCLURE: Form.

24 Foundation. Calls for speculation.

25 Leading.

1 THE WITNESS: I don't know for
2 certain, but we were never involved in
3 the financial portion of things.

4 QUESTIONS BY MR. LANIER:

5 Q. Well, you know that there are
6 companies that operate for profit?

7 A. Yes.

8 Q. And you know they make their
9 profit distributing drugs. You call them a
10 wholesaler at times, right?

11 A. Yes.

12 MS. MCCLURE: Form.

13 QUESTIONS BY MR. LANIER:

14 Q. Because they take from the
15 manufacturer and they put in the hands of the
16 pharmacies, right?

17 MR. EPPICH: Objection. Form.
18 Foundation. Calls for speculation --

19 MS. MCCLURE: Leading.

20 MR. EPPICH: -- to this and the
21 prior question.

22 THE WITNESS: Yes.

23 QUESTIONS BY MR. LANIER:

24 Q. And you know that that's
25 generally how they make their money. They're

1 not sitting on the street corner with a cup
2 saying, "We do our work for free; would you
3 please give us money"?

4 MS. MCCLURE: All the same
5 objections, plus argumentative, plus
6 compound.

7 THE WITNESS: It would be an
8 assumption that that's how they're
9 making their money.

10 QUESTIONS BY MR. LANIER:

11 Q. Yeah. Have you ever known a
12 big distributor of opioids that's a nonprofit
13 company?

14 A. No.

15 Q. All right. So you've got a
16 company that's got to make a sales decision,
17 knowing if they ship and sell the product
18 they make their money, most likely. And yet
19 it's their decision, it's not the DEA's, in
20 the normal course of events, absent some
21 order, right?

22 MR. EPPICH: Objection. Form.
23 Misstates testimony.

24 MS. MCCLURE: Leading.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. LANIER:

2 Q. And so in your summary sheet,
3 which is right toward the end, you had to
4 tell them that any "distributor selling
5 controlled substances that are being
6 dispensed outside the course of professional
7 practice must stop immediately."

8 You had to tell them that,
9 right?

10 MS. MCCLURE: Form. Compound.
11 Leading.

12 THE WITNESS: We did tell them
13 that, yes.

14 QUESTIONS BY MR. LANIER:

15 Q. But, I mean, that's a gimme.
16 Should be, shouldn't it?

17 MS. MCCLURE: Argumentative.
18 Form. Foundation. Leading.

19 THE WITNESS: It should be.

20 QUESTIONS BY MR. LANIER:

21 Q. Right before you left the DEA
22 to go do work as a consultant for
23 AmerisourceBergen and others, there was a
24 show cause order that was issued. It was
25 Exhibit 12 that you were shown yesterday,

1 this order to show cause and immediate
2 suspension of registration to
3 AmerisourceBergen in 2007.

4 Do you see that?

5 A. Yes.

6 Q. And the order to show cause was
7 based on the respondent -- that would be
8 AmerisourceBergen, right?

9 MS. MCCLURE: Form.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. LANIER:

12 Q. -- failing to maintain
13 effective controls against diversion of
14 particular controlled substances, in
15 violation of the law.

16 Do you see that?

17 A. I do.

18 Q. Several of their largest
19 purchasers of hydrocodone --

20 That's an opioid, right?

21 A. It is.

22 Q. -- in 2005 and 2006 were
23 pharmacies engaged in schemes to dispense
24 controlled substances based on prescriptions
25 that are issued for other than a legitimate

1 medical purpose and by physicians acting
2 outside the usual course of professional
3 practice.

4 That's while you were there,
5 wasn't it?

6 A. Yes.

7 Q. I mean, y'all were listing it
8 here. Y'all have got over a million doses of
9 these opioids in just one year at one place,
10 right?

11 MS. MCCLURE: Form.

12 THE WITNESS: Correct.

13 QUESTIONS BY MR. LANIER:

14 Q. And you've got them doing it
15 under similarly suspicious circumstances to a
16 number of different pharmacies, don't you?

17 MS. MCCLURE: Form. Vague.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. LANIER:

20 Q. And then y'all's investigation
21 and your work and what you knew is that
22 public information regarding several of the
23 pharmacy customers was readily available to
24 AmerisourceBergen.

25 MS. MCCLURE: Form. Scope.

1 QUESTIONS BY MR. LANIER:

2 Q. That's true, isn't it?

3 A. Yes.

4 Q. And had AmerisourceBergen
5 attempted to learn about these pharmacies
6 prior to filling the suspicious orders, they
7 would have known many of the named pharmacies
8 were filling prescriptions issued by
9 physicians acting outside the usual course of
10 professional practice, in violation of the
11 law, wouldn't they?

12 MS. MCCLURE: Form.

13 THE WITNESS: That's correct.

14 QUESTIONS BY MR. LANIER:

15 Q. And this is all work that
16 happened while you were at the DEA, isn't it?

17 A. It is.

18 Q. It continues on page 3 to talk
19 about how they sold over 5.2 million dose
20 units of this opioid to pharmacies that bore
21 the characteristics that the DEA described in
22 that very October -- August 2005 meeting,
23 correct?

24 MS. MCCLURE: Form.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. LANIER:

2 Q. So y'all met with them. You
3 made it clear what the law was, and they,
4 afterwards, continued to sell in violation of
5 the law, based upon the way you understood
6 it, correct?

7 MS. MCCLURE: Objection. Form.
8 Foundation. Leading.

9 THE WITNESS: Correct.

10 QUESTIONS BY MR. LANIER:

11 Q. Interestingly, you were shown
12 yesterday Exhibit Number 18, which is this
13 summary of the DEA HDMA meeting.

14 HDMA, who are they?

15 A. They're a trade association,
16 the Healthcare Distribution Management
17 Association.

18 Q. This is a trade association.
19 This is an organization that the pharmacy
20 companies fund and join, right?

21 MS. MCCLURE: Form.

22 MS. WICHT: Object to form.

23 MS. MCCLURE: Foundation.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MR. LANIER:

2 Q. And you were meeting with them.
3 You were one of the DEA attendees, right?

4 A. Correct.

5 Q. And then I was reading this
6 Exhibit 18 they showed you yesterday, and it
7 says that y'all "prioritize who to meet with
8 on a combination of wholesale distributor
9 sales volumes and tracing back to where you
10 felt the source of the products for illicit
11 Internet pharmacies was located."

12 Is that true?

13 MS. MCCLURE: Form.

14 QUESTIONS BY MR. LANIER:

15 Q. So in other words, y'all met
16 with the volume source problems first?

17 A. We met with those wholesalers
18 that handled the largest volumes of
19 controlled substances first.

20 Q. Yeah.

21 So that means you met first
22 with the AmerisourceBergen, I guess, right?

23 A. Yes.

24 Q. Who did you meet with next?

25 A. I believe it was Cardinal.

1 Q. Who did you meet with next?

2 A. McKesson.

3 Q. Have you heard the expression
4 "the big three" when it comes to
5 distributors?

6 A. Yes.

7 Q. Those are the big three, aren't
8 they?

9 A. They are referred to as that.

10 Q. Now, it's apparent by us
11 reading this -- it's apparent by us reading
12 this that holding shipments that were
13 suspicious was a new thing for Amerisource in
14 2007, true?

15 A. Yes.

16 Q. I mean, they made that point
17 yesterday. They never did that before, did
18 they, to your knowledge?

19 A. Not that I'm aware of, no.

20 Q. I mean, think of this: Before
21 that, AmerisourceBergen would be suspicious
22 that this might be an order that could be
23 diverted, and they'd just sell it anyway --

24 MS. MCCLURE: Form.

25 Foundation.

1 QUESTIONS BY MR. LANIER:

2 Q. -- wouldn't they?

3 A. They were reporting things
4 after shipment, yes.

5 Q. In other words, oh, we have our
6 suspicions that this may be illegal, may be
7 used for wrong purposes, may hurt the public,
8 may hurt health. We have suspicions this can
9 be diverted, but we're going to sell anyway.

10 MS. MCCLURE: Objection.

11 QUESTIONS BY MR. LANIER:

12 Q. That was their policy --

13 MS. MCCLURE: Objection.

14 Misstates.

15 QUESTIONS BY MR. LANIER:

16 Q. -- before 2007, wasn't it?

17 MS. MCCLURE: Objection.

18 Misstates the record. Form.

19 Foundation.

20 THE WITNESS: I don't know that
21 it was a policy of theirs.

22 QUESTIONS BY MR. LANIER:

23 Q. Well, it was their practice --

24 MS. MCCLURE: All the same.

25

1 QUESTIONS BY MR. LANIER:

2 Q. -- wasn't it?

3 A. Yes.

4 Q. I mean, you told these
5 companies that under the old Harrison
6 Narcotic Act -- you know what that is, right?

7 A. Yes.

8 Q. That's what preceded the
9 Controlled Substances Act?

10 A. Correct.

11 Q. And you would talk to these
12 companies about this US Supreme Court
13 explaining the need to hold suspicious
14 shipments, didn't you?

15 A. In those meetings, yes.

16 Q. And the case you were citing
17 from the US Supreme Court -- I looked at your
18 meeting notes -- 1943, Direct Sales versus
19 United States, correct?

20 A. Yes.

21 Q. So you knew since 1943 about
22 the need to hold suspicious orders --

23 MR. EPPICH: Object to form.

24 QUESTIONS BY MR. LANIER:

25 Q. -- didn't you?

1 MR. EPPICH: Object to form.

2 THE WITNESS: I don't recall
3 the details of that case and what it
4 refers to, but it was a case from...

5 QUESTIONS BY MR. LANIER:

6 Q. From 1943, Direct Sales versus
7 the United States, where the petitioner was a
8 registered drug manufacturer and wholesaler,
9 and they were selling to Dr. Tate in such
10 quantities and so frequently that it must
11 have known he couldn't dispense the amounts
12 lawfully, and so he was distributing them
13 illegally. And they were continuing to ship
14 to him even after they should have known
15 this, and that's what they got nailed for.

16 That's the case, isn't it?

17 MS. MCCLURE: Form.

18 MR. EPPICH: Objection.

19 THE WITNESS: Yes.

20 QUESTIONS BY MR. LANIER:

21 Q. And you included that case in
22 what you gave the companies?

23 A. Yes, we did.

24 Q. And that was an opioid case,
25 wasn't it?

1 MS. MCCLURE: Form.

2 THE WITNESS: It was.

3 QUESTIONS BY MR. LANIER:

4 Q. So this idea that, ah, geez, we
5 couldn't know, I mean, you gave them a case
6 that said since 1943 the US Supreme Court
7 said that you should be holding these things,
8 right?

9 MS. MCCLURE: Form.

10 Foundation. Misstates.

11 THE WITNESS: Yes, the Supreme
12 Court said that you should have known.

13 QUESTIONS BY MR. LANIER:

14 Q. And with all due respect, have
15 you seen a chart of how the opioid crisis
16 exploded in Summit and Cuyahoga Counties --
17 Cuyahoga County? Sorry, I'm from Lubbock,
18 Texas. We don't do that well.

19 Cuyahoga County?

20 A. No, I have not.

21 Q. So no one showed you the chart
22 that was prepared, and it's in the expert
23 report of Craig McCann. I want to make it
24 real clear he's one of our experts, but I
25 don't think anybody disputes this chart.

1 MS. MCCLURE: Note for the
2 record significant laughter, and
3 objection to characterization
4 regarding the plaintiffs' exhibit.

5 QUESTIONS BY MR. LANIER:

6 Q. This is actually from Rafalski,
7 Jim Rafalski, originally. And it shows --

8 MR. EPPICH: Objection.

9 QUESTIONS BY MR. LANIER:

10 Q. -- the huge -- I mean, boy,
11 this is all we had. If we were just looking
12 at this, you'd say, man, what happened in
13 1999 and 2000? All of a sudden the sales
14 just went through the roof?

15 Do you see that?

16 MS. SWIFT: Objection.

17 MS. MCCLURE: Objection.

18 Characterization. Scope.

19 THE WITNESS: I see an
20 increase.

21 QUESTIONS BY MR. LANIER:

22 Q. Yeah. And then -- but that's
23 nothing compared to what happened after that.
24 That's a mountain, isn't it?

25 MS. SWIFT: Objection.

1 Mischaracterizes the evidence.

2 MS. MCCLURE: Objection.

3 Narrative. Scope.

4 THE WITNESS: Yes, it's another
5 large increase.

6 QUESTIONS BY MR. LANIER:

7 Q. We're taking the deposition,
8 your deposition today, in Colorado Springs
9 where you live, right?

10 A. Yes.

11 Q. Is that Pikes Peak I saw out
12 the window?

13 A. Could have been.

14 Q. 14,000-plus feet?

15 A. Yes.

16 Q. I mean, you know mountains,
17 don't you?

18 MS. MCCLURE: Form.

19 THE WITNESS: Yes.

20 QUESTIONS BY MR. LANIER:

21 Q. So when a company sees a
22 suspicious order, the company's got to make
23 this decision: Do we sell it and make our
24 money, or do we hold it and investigate it?
25 That's the company's decision,

1 right?

2 MS. MCCLURE: Form. Compound.

3 THE WITNESS: It is.

4 QUESTIONS BY MR. LANIER:

5 Q. Always has been the company's
6 decision, hasn't it?

7 A. It has.

8 Q. And common sense weighs in to
9 this just as much as the law and everything
10 else, doesn't it?

11 MS. MCCLURE: Form.

12 THE WITNESS: Yes.

13 QUESTIONS BY MR. LANIER:

14 Q. And decency weighs in on this,
15 too, and concern for public good and public
16 health, right?

17 MS. MCCLURE: Form.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. LANIER:

20 Q. And so faced with that on one
21 side of the coin, and on the other side of
22 the coin or the ledger you've got corporate
23 profits and business, right?

24 MS. MCCLURE: Form.

25 THE WITNESS: Yeah, those are

1 factors they need to consider.

2 QUESTIONS BY MR. LANIER:

3 Q. All right. In this regard, I
4 asked Joe Rannazzisi some questions in his
5 deposition, and I'd like to -- I've got the
6 notes that I made from his deposition, and
7 I'd like to just ask you some questions based
8 on those notes to see if you agree or
9 disagree?

10 Okay?

11 A. Okay.

12 MS. MCCLURE: Objection. Based
13 on the notes, mischaracterized
14 Mr. Rannazzisi's actual testimony.

15 QUESTIONS BY MR. LANIER:

16 Q. "All registrants are required
17 to maintain effective control against
18 diversion." I'm going to put your answers in
19 blue.

20 Do you agree or disagree?

21 A. Agree.

22 Q. And so this is blue for
23 Mr. Mapes.

24 "The registrant is required to
25 report a suspicious order to the DEA."

1 Do you agree?

2 A. Yes.

3 Q. "The registrant is required to
4 maintain a system to detect suspicious
5 orders."

6 Do you agree with that part?

7 A. Yes.

8 Q. And "It's a business decision,
9 but they must identify suspicious orders."

10 Do you agree?

11 A. Yes.

12 Q. And "They should not ship
13 suspicious orders without full due diligence
14 that resolves their suspicions."

15 Do you agree?

16 A. I agree.

17 MS. WICHT: Object to form on
18 the last question.

19 QUESTIONS BY MR. LANIER:

20 Q. I don't need ask you this one
21 because we've covered it with our own
22 drawing, although I did a better drawing for
23 him, didn't I?

24 Let's just work through it.

25 A closed system of

1 distribution, that's what we called a loop,
2 right?

3 Agreed?

4 A. Yes.

5 Q. And it accounts for the drugs
6 from the manufacturing to the patient, agree?

7 A. Yes.

8 Q. And this system, it's for the
9 legal obligation to secure, keep records and
10 control against diversion, agree?

11 A. Yes.

12 MS. SWIFT: Object to form.

13 QUESTIONS BY MR. LANIER:

14 Q. Manufacturers, they make money
15 off the manufacturing and selling of the
16 pills, generally, true?

17 MR. EPPICH: Objection.

18 Foundation.

19 MS. MCCLURE: Form.

20 Foundation.

21 QUESTIONS BY MR. LANIER:

22 Q. Let me ask it this way, and I
23 don't think that's the way I asked

24 Mr. Rannazzisi.

25 Manufacturers manufacture pills

1 and sell them, general course of business,
2 right?

3 I'm not saying they don't give
4 samples. I'm not saying they don't, you
5 know, have some that they may put under
6 various programs, but they manufacture pills,
7 fair?

8 A. Yeah, various dosage forms.

9 Q. And the distributors are the
10 middleman who send out the money -- or take
11 orders and get paid as a bridge, agreed?

12 MR. EPPICH: Objection. Form.

13 QUESTIONS BY MR. LANIER:

14 Q. Between the manufacturers and
15 retailers?

16 MR. EPPICH: Object to the
17 form.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. LANIER:

20 Q. Would you agree that they are a
21 key component to this registration system?

22 MR. EPPICH: Object to form.

23 THE WITNESS: Yes.

24 QUESTIONS BY MR. LANIER:

25 Q. Would you agree that they must

1 be vigilant, and by that include due
2 diligence, knowing their customers and
3 looking at suspicious orders, agreed?

4 MR. EPPICH: Objection. Form.
5 Vague.

6 MS. SWIFT: Objection. Legal
7 conclusion.

8 MR. EPPICH: Calls for a legal
9 conclusion.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. LANIER:

12 Q. And would you agree that this
13 is critical to stop diversion?

14 MR. EPPICH: Object to the
15 form.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. LANIER:

18 Q. And I've asked you if you know
19 whether or not the more they sell, the more
20 money they make.

21 You assume that to be true, but
22 you don't know firsthand, fair?

23 A. That's correct.

24 Q. All right. We'll leave that
25 unmarked.

1 Now, in 2005, Joe Rannazzisi
2 says he sat down with the distributors, he
3 explained the law as he interpreted it and
4 what was expected.

5 Were you in on that meeting?

6 MS. WICHT: Objection.
7 Foundation.

8 MS. MCCLURE: Objection to the
9 extent it mischaracterizes what
10 Mr. Rannazzisi testified to.

11 THE WITNESS: I don't know
12 which meeting he may have been
13 referring to.

14 QUESTIONS BY MR. LANIER:

15 Q. Okay. So don't know if you
16 were there.

17 Did you know that those
18 meetings took place?

19 MS. MCCLURE: Continuing
20 objection. Same.

21 THE WITNESS: The meetings I'm
22 aware of were the Distributor
23 Initiative meetings that we've talked
24 about already, and he was at, I
25 believe, one of those.

1 QUESTIONS BY MR. LANIER:

2 Q. So you know -- whoops. You
3 know about those meetings with the
4 distributors where you were involved
5 explaining the law?

6 A. Yes.

7 Q. Okay. And then in 2006 and
8 2007, he sent letters telling them to
9 remember their responsibilities.

10 Did you know about that?

11 A. Yes.

12 MS. MCCLURE: Form.

13 Mischaracterizes the document.

14 QUESTIONS BY MR. LANIER:

15 Q. And then he testified the
16 companies, at least several companies, didn't
17 do what they were directed to do. They
18 didn't comply.

19 You know that to be true, at
20 least for the McKesson story -- I mean, the
21 AmerisourceBergen story we were talking about
22 before, right?

23 MS. MCCLURE: Objection. Form.

24 Foundation. Mischaracterizes the
25 witness' testimony.

1 THE WITNESS: Yeah, I know
2 there were continuing issues.

3 QUESTIONS BY MR. LANIER:

4 Q. Well, not just continuing
5 issues, continuing violations based upon your
6 interpretation?

7 MS. MCCLURE: All the same
8 objections plus asked and answered.
9 Argumentative.

10 QUESTIONS BY MR. LANIER:

11 Q. And by "your" I mean you,
12 individually, not the DEA.

13 MS. MCCLURE: All the same.

14 MR. BENNETT: Objection.

15 Scope.

16 You may answer that question
17 yes or no only.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. LANIER:

20 Q. Okay. And the company changed
21 the law. They lobbied hard to get a bill
22 passed that changed the ability of the DEA to
23 control distributors, didn't they?

24 MS. MCCLURE: Form.

25 Foundation. Compound. Misstates the

1 record. Vague.

2 THE WITNESS: There was a
3 change in the law, yes.

4 QUESTIONS BY MR. LANIER:

5 Q. We'll look at how much the
6 company spent to lobby for that in a little
7 bit, if we have time.

8 And diversion causes overdose
9 and deaths, 16,000 in 2014 to 2015. That's
10 consistent with what you knew as well, right?

11 MR. EPPICH: Objection.
12 Foundation.

13 THE WITNESS: No, I don't know
14 what the numbers are. I wasn't with
15 DEA at that point and don't know.

16 QUESTIONS BY MR. LANIER:

17 Q. Okay. Now, "if the companies
18 are asserting a roadblock," I asked
19 Mr. Rannazzisi in his deposition, "that the
20 DEA was part of the problem, that you didn't
21 do your job right or that Joe Ran didn't do
22 his job right or the others," Joe Ran
23 disagreed and said the DEA tried to stop
24 diversion and to clean up the supply chain.

25 Do you think that the DEA was

1 the problem?

2 MS. MCCLURE: Form.

3 MR. EPPICH: Objection. Form.

4 Misstates the testimony.

5 MR. BENNETT: Objection.

6 Scope. This is not a 30(b)(6) witness
7 here to testify on behalf of DEA.

8 If you have a personal opinion
9 based on your personal experiences,
10 you may answer the question.

11 THE WITNESS: I believe the DEA
12 worked within the resources they had
13 to address the problem.

14 QUESTIONS BY MR. LANIER:

15 Q. Uh-huh.

16 Would you agree that if the
17 companies stopped diversions, the DEA's never
18 even going to be an issue?

19 If the companies truly did what
20 the law told them to do, the DEA's not a
21 problem on this, right?

22 MS. MCCLURE: Form.

23 Speculation. Foundation. Calls for a
24 legal conclusion and scope.

25 MS. WICHT: Incomplete

1 hypothetical.

2 MR. BENNETT: Same instruction.

3 THE WITNESS: I believe that
4 DEA would always have to be there to
5 provide oversight, so it would
6 continue.

7 QUESTIONS BY MR. LANIER:

8 Q. Right. To make sure the
9 oversight is there.

10 But if the companies have
11 stopped diversion, oversight is pretty
12 simple, right?

13 MS. MCCLURE: All the same
14 objections. Leading.

15 THE WITNESS: Yes.

16 QUESTIONS BY MR. LANIER:

17 Q. And then if there's an argument
18 that the distributors, the manufacturers,
19 pharmacies, they were just confused, you know
20 from your work that those companies have
21 lawyers that are inside the company and
22 lawyers that they hire outside the companies,
23 right?

24 MS. SWIFT: Objection.
25 Leading.

1 THE WITNESS: That's correct.

2 QUESTIONS BY MR. LANIER:

3 Q. And the DEA hasn't and doesn't
4 give legal counsel, true?

5 MS. MCCLURE: Form.

6 MR. EPPICH: Objection.
7 Misstates testimony.

8 MS. MCCLURE: Foundation.
9 Misstates the testimony and the
10 record.

11 THE WITNESS: That's correct.

12 QUESTIONS BY MR. LANIER:

13 Q. And some companies, you know
14 for a fact, hired former employees from the
15 DEA so they had that resource available as
16 well, true?

17 MS. MCCLURE: Foundation.

18 THE WITNESS: True.

19 QUESTIONS BY MR. LANIER:

20 Q. And if a company is confused,
21 they can always stop selling until they get
22 their questions answered, can't they?

23 MS. MCCLURE: Leading.

24 MS. WICHT: Foundation.

25 THE WITNESS: Yes, they could.

1 MR. LANIER: All right. That
2 ends our second stop on the road.
3 We're ready to go to the third stop.

4 If we could take a break for
5 about five minutes and I'll clean up
6 this mess.

7 VIDEOGRAPHER: Going off
8 record. The time is 10:12.

9 (Off the record at 10:12 a.m.)

10 VIDEOGRAPHER: We're going back
11 on record. Beginning of Media File 4.
12 The time is 10:23.

13 QUESTIONS BY MR. LANIER:

14 Q. Mr. Mapes, on the road that we
15 were doing, we've done your personal
16 background, we've done your work for your
17 DEA.

18 Now I want to talk to you about
19 some of the industry issues that arose when
20 you were with industry and some of the
21 questions that industry asked you today.

22 And as a reminder, you still do
23 work for industry today, right?

24 MS. MCCLURE: Form.

25 THE WITNESS: In what form?

1 QUESTIONS BY MR. LANIER:

2 Q. Well, you're a consultant to
3 one of the parties in this litigation, to
4 Cardinal, correct?

5 A. Yes.

6 Q. And I assume you're still --
7 your services are still out there to hire if
8 they need help on some DEA issue, fair?

9 A. No.

10 Q. You don't do that anymore?

11 A. No.

12 Q. So now your consulting is
13 limited to the legal arena for these
14 companies?

15 A. To this one instance, yes.

16 Q. All right. Now, in that
17 regard, sir, let's talk then about your
18 industry work and let's stop there on our
19 road.

20 Okay?

21 A. Okay.

22 Q. I want to begin with a question
23 from the AmerisourceBergen lawyer.

24 Now, the AmerisourceBergen
25 lawyer told you that the DEA had approved

1 their suspicious order monitoring system at
2 one point in time.

3 You were surprised by that,
4 remember?

5 MS. MCCLURE: Objection to the
6 narrative. Objection to misstates the
7 record. Form.

8 THE WITNESS: No, I don't
9 believe I was surprised by that.

10 QUESTIONS BY MR. LANIER:

11 Q. Okay. Then I may have
12 misunderstood you yesterday.

13 In regard to Exhibit Number 5,
14 going back to 1998 where the DEA said that
15 they would grant approval of the request to
16 implement on a nationwide basis the newly
17 developed system to identify and report
18 suspicious orders for controlled substances,
19 you already knew about that before yesterday?

20 MS. MCCLURE: Form.

21 THE WITNESS: What year was
22 this?

23 QUESTIONS BY MR. LANIER:

24 Q. 1998.

25 A. I don't believe I had seen that

1 particular memo before yesterday.

2 Q. Okay. Well, then that's what I
3 was saying. You did not know before
4 yesterday about this -- it was Exhibit 4.
5 I'll give you another copy of Exhibit 4 from
6 yesterday.

7 Exhibit 4 is this 1998 approval
8 of the request to implement nationwide a
9 newly developed system to identify and report
10 suspicious orders.

11 Do you see that?

12 A. Yes.

13 Q. Now, you say today that you
14 knew about this; you'd just not seen it?

15 A. I had not seen it before
16 yesterday.

17 Q. Okay. But yesterday it was set
18 forward before you as the method of providing
19 information being approved or the entire
20 monitoring system being approved?

21 MS. MCCLURE: Form.

22 QUESTIONS BY MR. LANIER:

23 Q. Which was it?

24 A. This appears to me to approve
25 the system to identify and report suspicious

1 orders, so that would be their entire system.

2 Q. Okay. So in that regard, look
3 at -- let's do it this way.

4 Did you ever look at the
5 system?

6 MS. MCCLURE: Form. Vague.

7 THE WITNESS: Did I look at --

8 QUESTIONS BY MR. LANIER:

9 Q. Yeah.

10 A. -- which system and --

11 Q. At what was approved?

12 A. -- at what point in time?

13 Q. Have you looked at the system
14 that was approved that she was talking about?

15 MS. MCCLURE: Form. Vague.

16 THE WITNESS: No.

17 QUESTIONS BY MR. LANIER:

18 Q. By the way, all of this was
19 dealing with methamphetamines, not opioids,
20 right?

21 MS. MCCLURE: Form. Misstates
22 the document. Foundation. Leading.

23 QUESTIONS BY MR. LANIER:

24 Q. Same law, same requirements to
25 deal with it, but these were all dealing with

1 methamphetamines back then, weren't they?

2 MS. MCCLURE: All the same
3 objections.

4 THE WITNESS: I believe they
5 were dealing with both, the chemicals,
6 the listed chemicals, and controlled
7 substances.

8 QUESTIONS BY MR. LANIER:

9 Q. If you'll look on the page
10 that's marked -- it's one of the overhead
11 letters, December 30, 1997. It's about three
12 or four pages in. It's got down in the lower
13 right-hand corner the number 350.

14 Do you see that?

15 A. Yes.

16 Q. It talks about how the
17 Methamphetamine Control Act requires
18 distributors to report suspicious orders of
19 listed chemicals to the DEA.

20 MS. MCCLURE: So I note that
21 the Exhibit 4 that you've just handed
22 out does have a different set of Bates
23 numbers applied to it, so the
24 reference to 350 that you read out for
25 the December 30th letter actually, in

1 this copy that you just handed to the
2 witness, ends in 786.

3 MR. LANIER: Okay. Thank you
4 for helping us do that.

5 QUESTIONS BY MR. LANIER:

6 Q. So she wants you to look at
7 page 786 instead of 9350. It's been produced
8 in multiple ways. Same document, though.

9 So Exhibit 4, page 786 in the
10 corner --

11 MS. MCCLURE: So we should
12 designate --

13 QUESTIONS BY MR. LANIER:

14 Q. -- is talking about the
15 Methamphetamine Control Act?

16 Do you see that?

17 MS. MCCLURE: So two things.
18 We should designate this document
19 you've handed the witness as 4A in
20 light of the fact that it is, in fact,
21 a different Bates numbers set.

22 And I continue to maintain all
23 of the same previously articulated
24 objections to your characterization of
25 the document.

1 (Mapes Exhibit 4A marked for
2 identification.)

3 QUESTIONS BY MR. LANIER:

4 Q. Do you see that, sir?

5 A. I do.

6 Q. This is talking about the need
7 to report suspicious orders of ephedrine and
8 pseudoephedrine.

9 Do you see that?

10 MS. MCCLURE: Continuing
11 objection to the use of the document
12 and the witness' testimony and...

13 QUESTIONS BY MR. LANIER:

14 Q. Do you see that, sir?

15 A. I do.

16 Q. That's Sudafed. The concern
17 was people taking Sudafed and buying large
18 amounts of it and using it to manufacture
19 crack; is that right?

20 A. No.

21 MS. MCCLURE: Continuing
22 objection.

23 QUESTIONS BY MR. LANIER:

24 Q. What was the concern?

25 A. They were using it to

1 manufacture methamphetamine.

2 Q. Crack's not methamphetamine?

3 A. No.

4 Q. Okay. I grew up in Lubbock.

5 We didn't know this stuff.

6 But they make drugs off of it.

7 They make illegal drugs, right?

8 A. Yes.

9 Q. Speed?

10 A. Yes.

11 Q. It's not opioids, is it?

12 A. No, it's not.

13 MS. MCCLURE: Form.

14 QUESTIONS BY MR. LANIER:

15 Q. Methamphetamine Control Act

16 doesn't apply to opioids, does?

17 MS. MCCLURE: Form. Calls for

18 a legal conclusion.

19 THE WITNESS: It does not.

20 QUESTIONS BY MR. LANIER:

21 Q. Okay. But just aside from the

22 fact that she gave you a methamphetamine --

23 deal -- the bottom line is, if you look at

24 it, the plan that was approved says that

25 they're going to hold shipping while

1 contacting and reporting it to the DEA.

2 Did she tell you that?

3 MS. MCCLURE: Form.

4 Mischaracterizes the document.

5 Continuing objection to all of the
6 previous ones I had identified.

7 THE WITNESS: I don't remember
8 specifically what she said yesterday.
9 There were a lot of questions.

10 QUESTIONS BY MR. LANIER:

11 Q. Well, she never gave you the
12 actual -- never gave it to you, never gave it
13 to the jury, the actual suspicious order
14 monitoring system she says was approved.

15 She never gave it to you, did
16 she?

17 MS. MCCLURE: Form.

18 THE WITNESS: That's correct.

19 (Mapes Exhibit 31 marked for
20 identification.)

21 QUESTIONS BY MR. LANIER:

22 Q. Well, let me give it to you.
23 We'll mark it as Exhibit Number 31.
24 Exhibit 31, suspicious order policy and
25 procedure for Bergen.

1 This is before they got bought
2 out by Amerisource.

3 Do you see that?

4 A. I see that.

5 Q. The old company, before they
6 got bought out by Amerisource, knew what is a
7 suspicious order. They're able to cite the
8 regulation on that, aren't they?

9 MS. MCCLURE: Form. Leading.

10 QUESTIONS BY MR. LANIER:

11 Q. Do you see that?

12 A. I see that.

13 Q. And they talk about they knew
14 what the division manager's responsibility
15 was, that they had to "design and operate a
16 system to disclose to the registrant
17 suspicious orders of controlled substances."

18 They knew that, didn't they?

19 A. It's included in the memo.

20 Q. But if you go to the last page,
21 you'll see some things at the very end, the
22 very last thing they have to say about it.

23 "It is imperative each division
24 manager understand these computer reports do
25 not relieve them of their responsibility to

1 report suspicious orders, especially large
2 single orders. Remember, the reports contain
3 information on actual sales only and do not
4 necessarily reflect actual orders."

5 Do you see where I'm reading?

6 A. I do.

7 Q. Talks about the different
8 formats, but then it says, "If these
9 customers' orders fit the suspicious order
10 criteria explained above" --

11 You tracking with me?

12 A. Yes.

13 Q. -- "you must contact DEA to
14 report the order before actually shipping the
15 merchandise. This must be done even if you
16 decide to cut the order back for business
17 reasons. Again, in this case, it is the
18 order that is suspicious, not the actual
19 shipment."

20 Did you see that?

21 A. Yes, I see that.

22 Q. In other words, don't ship it
23 until you report it to the FDA {sic}?

24 MS. MCCLURE: Form.

25

1 QUESTIONS BY MR. LANIER:

2 Q. That was in the program, wasn't
3 it?

4 A. To DEA.

5 Q. To DEA, I apologize. Let me
6 ask it again.

7 In other words, don't ship it
8 until you report it to the DEA?

9 MS. MCCLURE: Form.

10 THE WITNESS: That's correct.

11 QUESTIONS BY MR. LANIER:

12 Q. Well, that's not what the
13 company was doing once they'd been bought out
14 by Amerisource, is it?

15 MS. MCCLURE: Form. Calls
16 for -- foundation.

17 QUESTIONS BY MR. LANIER:

18 Q. Go ahead and answer.

19 A. They were not doing that.

20 Q. Yeah.

21 So they even quit the policy
22 that they had claimed to have gotten approved
23 for on the methamphetamine front, right?

24 MS. MCCLURE: Form.

25 Foundation.

1 THE WITNESS: I don't know if
2 they quit the policy, there were
3 lapses or what, but, yeah, there were
4 instances where it wasn't followed.

5 QUESTIONS BY MR. LANIER:

6 Q. Yeah.

7 Okay. Now I want to ask you
8 some specific questions from the industries.

9 Walmart asked you a bunch of
10 questions. Put Walmart up here.

11 The Walmart lawyer, you
12 remember him?

13 A. Yes.

14 Q. And the Walmart lawyer got here
15 and sat in this very chair and said, quote,
16 "Do you agree that good leaders hold
17 themselves accountable for the decisions they
18 make?"

19 Do you remember him asking you
20 that?

21 A. Yes.

22 Q. Well, I got a question.

23 If that's true for good leaders
24 inside the DEA and other places, that sure
25 ought to be true for Walmart, shouldn't it?

1 A. Yes.

2 Q. In other words, Walmart, if
3 they're good leaders in Walmart, they ought
4 to hold themselves accountable for the
5 decisions they're making, fair?

6 A. Fair.

7 Q. Then he asked you this: "Do
8 you agree the American public" -- and I've
9 written this out word for word, but it's
10 really a complicated question. I had trouble
11 understanding it, so I want to read it
12 carefully. I want you to read it with me. I
13 want the jury to be able to read it.

14 He said to you: "Do you agree
15 the American public has a right to expect
16 that the leaders of our law enforcement
17 agencies will lead their teams in a fashion
18 consistent with the standards?"

19 Remember that?

20 A. Generally, yes.

21 Q. And you generally agreed with
22 it, right?

23 A. Yeah.

24 Q. Well, do you agree the American
25 has a public -- has a right to expect that

1 the leaders of huge companies like Walmart
2 will lead their teams to follow the law and
3 not try to get away with actions that
4 endanger our communities and people?

5 A. Yes.

6 Q. I mean, company CEOs shouldn't
7 expect special treatment when it comes to
8 breaking the law, right?

9 A. That's right.

10 Q. Ignorance of law is no excuse,
11 right?

12 A. Right.

13 Q. Then he asked you this: "Would
14 you agree that drug traffickers and diverters
15 are the ones who potentially benefit if the
16 DEA decides to isolate itself from
17 individuals who help advance the DEA's
18 diversion investigations who are outside of
19 DEA?"

20 Again, I had to read that like
21 three or four times to understand it, but do
22 you understand that question?

23 A. I'm reading it again right now.

24 Q. I think what he was saying in
25 everyday language is, if someone's not doing

1 their job right, the drug traffickers and the
2 diverters can potentially benefit. That's
3 from the Walmart guy.

4 Right?

5 MR. STEPHENS: Object to form.

6 THE WITNESS: That is what I
7 think he's saying, yes.

8 QUESTIONS BY MR. LANIER:

9 Q. All right. Well, let's just be
10 real clear.

11 The drug traffickers here,
12 they're the people who are selling the
13 opioids, aren't they?

14 MR. STEPHENS: Object to form.

15 QUESTIONS BY MR. LANIER:

16 Q. Drug traffickers, they traffic,
17 they sell opioids, right?

18 MR. STEPHENS: Object to form.

19 THE WITNESS: In my mind,
20 traffickers are the ones that would
21 illegally sell as opposed to
22 legitimately sell.

23 QUESTIONS BY MR. LANIER:

24 Q. No fuss about that either.

25 Because if a distributor, even

1 if it's a legal company instead of some
2 fellow on the street, if that distributor is
3 not following the law, they're selling the
4 drugs illegally, aren't they?

5 A. They could be, yes.

6 Q. And so the traffickers, the
7 ones selling it illegally, and the diverters,
8 they're the ones who potentially benefit if
9 they can get away with it.

10 That's what this means, in
11 effect, isn't it?

12 MR. STEPHENS: Object to form.

13 THE WITNESS: It could mean
14 that, yes.

15 QUESTIONS BY MR. LANIER:

16 Q. Yeah. If we go back to our
17 little model, if we assume that the drug
18 companies -- if we can assume that these
19 distributors are for profit, they're going to
20 buy from the manufacturer and get it at a
21 wholesale cost, or get it at a cost that they
22 can then wholesale it to the pharmacies,
23 right?

24 MR. EPPICH: Objection.

25 Foundation.

1 QUESTIONS BY MR. LANIER:

2 Q. Now, there's a bunch of folks
3 that actually hit both of these columns. By
4 that I mean they're distributors and
5 pharmacies. They get to make the money from
6 both ends of that, aren't there?

7 MS. SWIFT: Objection.

8 Leading. Mischaracterizes the
9 evidence.

10 THE WITNESS: There are people
11 who are registered both as
12 distributors and pharmacies, yes.

13 QUESTIONS BY MR. LANIER:

14 Q. People like Walmart?

15 A. Yes.

16 Q. Walgreens? CVS?

17 A. CVS, yes. Walgreens, I'm not
18 sure.

19 Q. Okay. I mean, they're the ones
20 who profit. They make money off these sales,
21 don't they?

22 MR. STEPHENS: Object to form.

23 THE WITNESS: Again, I never
24 have been involved in the financial
25 end of things so don't really...

1 QUESTIONS BY MR. LANIER:

2 Q. All right. Here's another one
3 from the Walmart lawyer. He said: "You're
4 not aware of any deadline that the DEA set
5 that changed this practice related to the
6 shipping of suspicious orders."

7 Do you remember that?

8 A. Yes.

9 Q. I mean, come on, you give them
10 the 1943 decision from the Supreme Court,
11 right?

12 MR. STEPHENS: Object to form.
13 Foundation.

14 QUESTIONS BY MR. LANIER:

15 Q. The law -- right? You gave it
16 to them, right?

17 MR. STEPHENS: Objection.

18 THE WITNESS: Gave that to
19 whom, Walmart?

20 QUESTIONS BY MR. LANIER:

21 Q. Well, you gave it to different
22 distributors, but, I mean, it's -- Walmart's
23 lawyers, their in-house legal team, that
24 is -- they've got, like, lots of lawyers on
25 it.

1 They have access to the Supreme
2 Court just as well as you, don't they?

3 A. I'm sure they do.

4 Q. Okay. So you have your 1943
5 decision, but the law itself, that was from
6 the 1970s, wasn't it?

7 A. Yes.

8 Q. And did the DEA ever tell the
9 companies, "Oh, go ahead, just ship those
10 suspicious orders. It's following the law
11 when you ship a suspicious order. You don't
12 need to do due diligence. You don't need to
13 check into it. You don't -- yeah, it's
14 excessive, yeah, it's suspicious, yeah, it's
15 probably going to be diverted, but just ship
16 it anyway and make the money"?

17 Did y'all ever tell them to do
18 that?

19 A. I never did.

20 MS. WICHT: Object to form.

21 QUESTIONS BY MR. LANIER:

22 Q. Do you know anyone who ever
23 did?

24 MR. EPPICH: Object to form.

25 MS. WICHT: Object to form.

1 QUESTIONS BY MR. LANIER:

2 Q. At the DEA?

3 A. No, I don't.

4 Q. That's the company's decision
5 whether or not they want to understand the
6 law and follow the law, right?

7 MS. MCCLURE: Form. Calls for
8 a legal conclusion.

9 THE WITNESS: Yes.

10 QUESTIONS BY MR. LANIER:

11 Q. It's the company's decision
12 whether or not they want to ship a suspicious
13 order or hold it, isn't it?

14 A. It is.

15 Q. And your answers about Walmart
16 apply to any of the other companies that that
17 Walmart lawyer said he was asking questions
18 on behalf of that were in the same or similar
19 shoes, fair?

20 MR. STEPHENS: Object to form.

21 MR. EPPICH: Object to form.

22 Vague.

23 THE WITNESS: Yes.

24 QUESTIONS BY MR. LANIER:

25 Q. Now, the Walmart lawyer asked

1 you some other things. He said -- I couldn't
2 follow this. It sounded to me like the
3 Walmart lawyer is blaming the DEA for not
4 disclosing who their informants and their
5 sources are for diversion problems.

6 MR. STEPHENS: Object to form.

7 QUESTIONS BY MR. LANIER:

8 Q. Did you remember those
9 questions?

10 A. The general line of questions,
11 yes.

12 Q. Yeah.

13 I mean, is the DEA supposed to
14 be telling people, "Oh, here are our
15 informants, and here's how we figured out
16 who's breaking the law and who's not"?

17 MR. STEPHENS: Object to form.

18 QUESTIONS BY MR. LANIER:

19 Q. I mean, y'all aren't supposed
20 to tell that to the companies that you're
21 investigating, are you?

22 A. No.

23 Q. And the fact that you're not
24 telling Walmart about how you figured out
25 AmerisourceBergen may or may not be breaking

1 the law, that doesn't excuse Walmart for
2 breaking the law, does it?

3 MR. STEPHENS: Object to form.
4 Foundation.

5 THE WITNESS: No, it does not.

6 QUESTIONS BY MR. LANIER:

7 Q. And then he says, "The DEA can
8 get a search warrant."

9 Remember that question?

10 A. I do.

11 Q. Well, Walmart doesn't need a
12 search warrant to look in its own closet,
13 does it?

14 MR. STEPHENS: Object to form.

15 THE WITNESS: No.

16 QUESTIONS BY MR. LANIER:

17 Q. I mean, if you want to go look
18 into the bowels of Walmart's records and what
19 they're doing and their due diligence and
20 all, you may need to get a search warrant if
21 you're working for the DEA, but Walmart
22 doesn't need a search warrant to go
23 investigate their own processes and
24 procedures, do they?

25 A. No.

1 Q. I mean, this whole idea of the
2 DEA's -- can get a search warrant when
3 Walmart can't, Walmart doesn't need that
4 search warrant to look at their own records,
5 fair?

6 A. That's fair.

7 Q. And by the same token, does
8 Walmart need a grand jury before they can
9 figure out if Walmart is diverting or selling
10 to bad pharmacies?

11 A. I don't believe so.

12 Q. Does Walmart need a grand jury
13 before they figure out whether or not they're
14 selling on bad prescriptions that are
15 obviously suspicious on their face?

16 MR. STEPHENS: Object to form.

17 MS. MCCLURE: Object to form.

18 MR. EPPICH: Scope.

19 THE WITNESS: No.

20 QUESTIONS BY MR. LANIER:

21 Q. Does Walmart need a subpoena to
22 see what information Walmart has?

23 A. No.

24 Q. Does Walmart need the FBI to
25 see what information Walmart has?

1 A. No.

2 Q. And then the Walmart lawyer
3 said, "Yeah, the DEA has lots of tools for
4 fighting diversion."

5 Remember that?

6 A. Yes.

7 Q. Walmart can see in realtime an
8 excessive flood of pills going out. That's
9 an ability they've got the DEA doesn't have
10 realtime, true?

11 MR. STEPHENS: Object to form.

12 THE WITNESS: I don't really
13 know all the capabilities of their
14 system, so it would be a guess.

15 QUESTIONS BY MR. LANIER:

16 Q. Well, if they're going out
17 through their pharmacies, they got a
18 pharmacist who's selling them. I mean, it's
19 happening at their store in realtime.

20 They can see that, fair?

21 MR. STEPHENS: Object to form.
22 Scope.

23 THE WITNESS: They should be
24 able to see that, yes.

25

1 QUESTIONS BY MR. LANIER:

2 Q. That's a valuable tool, isn't
3 it?

4 A. Yes.

5 Q. Next. He said: "The DEA can
6 use undercover folks."

7 Remember that?

8 A. Yes.

9 Q. Well, Walmart can, too, can't
10 they?

11 Look, have you ever seen those
12 mystery shoppers, where they dress people up
13 and just have them pretend they're someone
14 else in the store?

15 A. Yes.

16 Q. I mean, they can put people in
17 the store that don't have "Greetings, I'm
18 from Walmart" on their clothes to watch the
19 people who are coming in to peddle or buy
20 these things, can't they?

21 A. They could.

22 MR. STEPHENS: Object to form.

23 QUESTIONS BY MR. LANIER:

24 Q. Everybody who works at Walmart
25 doesn't have to have the Walmart greeter blue

1 on, do they?

2 A. No.

3 Q. And then he asked you these
4 questions about the DEA being able to use
5 hidden room bugs.

6 Remember that?

7 A. I do.

8 Q. Heck, Walmart sells hidden room
9 bugs.

10 Did you know that?

11 A. I did not.

12 Q. Did you know that they hide
13 cameras all over their stores?

14 MR. STEPHENS: Object to form.

15 THE WITNESS: I assume they do.

16 QUESTIONS BY MR. LANIER:

17 Q. They hide the cameras inside
18 the stores and they got cameras outside their
19 stores; did you know that?

20 MR. STEPHENS: Object to form.

21 THE WITNESS: I've seen cameras
22 outside.

23 QUESTIONS BY MR. LANIER:

24 Q. They've got security guys
25 driving around in the parking lots of some of

1 their stores; did you know that?

2 A. Yes.

3 Q. Did you know that Walmart has
4 security forces that have trained people how
5 to pick up and stop shoplifters?

6 A. Yes.

7 Q. In other words, if someone is
8 going to get something from Walmart illegally
9 that's going to affect Walmart's bottom line,
10 they've got an entire force set up that
11 trains people to stop that.

12 MR. STEPHENS: Object to form.

13 QUESTIONS BY MR. LANIER:

14 Q. But have you ever seen Walmart
15 have an entire force --

16 MR. STEPHENS: Scope.

17 QUESTIONS BY MR. LANIER:

18 Q. -- set up how to train people
19 how to find suspicious orders from the people
20 who are coming in with the prescriptions and
21 buying the pills in their stores?

22 MR. STEPHENS: Object to form.

23 Scope.

24 THE WITNESS: I have never had
25 discussions with Walmart about their

1 suspicious order procedures and their
2 training and those kind of things.

3 QUESTIONS BY MR. LANIER:

4 Q. All right. Next. The Walmart
5 lawyer asked you questions about whether Joe
6 Rannazzisi or the DEA shared the ARCOS data
7 with companies, right?

8 A. Yes.

9 Q. Now, let's flesh out ARCOS data
10 for just a moment.

11 ARCOS data, that is this --
12 each company, each registrant, is required to
13 turn in data to the DEA about drugs that
14 they're selling. Opioids is what we're
15 concerned about here, opioids they're
16 selling, right?

17 A. That's correct.

18 Q. And each company has their own
19 data, right?

20 A. Yes, they do.

21 Q. But one company doesn't have
22 the data of another company, right?

23 A. That's correct.

24 Q. So Walmart can't see who CVS is
25 selling their drugs to and who's writing

1 their prescriptions, right?

2 CVS's data is in a silo for CVS
3 that they can know, but Walmart doesn't get
4 that competitive edge of knowing what CVS is
5 doing, fair?

6 A. That's correct, except that it
7 doesn't get to the level of prescription
8 data. It's wholesalers selling to retail
9 pharmacies.

10 Q. Still they --

11 A. Manufacturers to wholesalers.

12 Q. That's fine.

13 They don't know, gee, that
14 store is selling more opioids than this
15 store. Maybe we need to put something in
16 that location so we can get on that
17 prescription gravy train.

18 That type of information is a
19 competitive edge if one company gets it on
20 another, fair?

21 MR. STEPHENS: Object to form.

22 THE WITNESS: It could be.

23 QUESTIONS BY MR. LANIER:

24 Q. And so the companies
25 themselves, they won't agree to share in the

1 data, at least based upon your experience --

2 A. I am --

3 Q. -- inside the DEA and out,
4 right?

5 A. I have not seen them agree to
6 share it.

7 Q. All right. Never seen them --
8 see.

9 I mean, if the lawyer for
10 Walmart wants to make a big deal out of this,
11 then Walmart could easily give its ARCOS data
12 to CVS if he thought it was an important
13 thing to do, couldn't they?

14 MR. STEPHENS: Object to form.

15 THE WITNESS: They could.

16 QUESTIONS BY MR. LANIER:

17 Q. I mean, if Walmart thought it
18 was going to help this opioid crisis by
19 sharing its own sales data with its
20 competitors, there's nothing the DEA, the
21 DOJ, the FBI, the CIA, the US Constitution,
22 the Magna Carta, there's nothing The Ten
23 Commandments would do to stop that, right?

24 A. Not that I'm aware of.

25 MR. EPPICH: Objection.

1 MS. MCCLURE: Objection.

2 Foundation. Form.

3 MR. EPPICH: Calls for a legal
4 conclusion.

5 QUESTIONS BY MR. LANIER:

6 Q. Did you know the DOJ won't
7 agree to share the ARCOS data from one
8 company to another?

9 MR. BENNETT: And I'm going to
10 interject an objection to the last
11 question. Scope. He doesn't speak on
12 behalf of Department of Justice or
13 DEA.

14 MR. LANIER: True.

15 MR. BENNETT: I'll also
16 interject an objection to this
17 question for the same reasons.

18 If you have an opinion in your
19 personal capacity, you may answer.

20 MR. LANIER: And that's what
21 I'm asking, thank you, your opinion in
22 a personal capacity based on your
23 experience.

24 QUESTIONS BY MR LANIER:

25 Q. You haven't seen the DOJ just

1 open up pell-mell this data to everybody,
2 have you, the Department of Justice?

3 A. I understand that there may be
4 some type of way to share a limited subset of
5 the data, but I don't know the details of
6 that.

7 Q. Yeah.

8 It's not easy to get, but each
9 company's got their own data; that's the
10 bottom line, right?

11 A. Yes.

12 Q. And the enforcement that the
13 DEA did when you've seen it from the outside
14 or when you were there based on your personal
15 experience -- not secret data. I don't want
16 to go behind the curtain of how y'all did
17 stuff, and I don't want you speaking for the
18 DEA. Just what you know from your personal
19 knowledge and public information.

20 We know publicly enforcement
21 always comes from a company's own data --

22 MS. MCCLURE: Form. Misstates.

23 QUESTIONS BY MR. LANIER:

24 Q. -- true?

25 MR. STEPHENS: Object to form.

1 THE WITNESS: As well as other
2 sources.

3 QUESTIONS BY MR. LANIER:

4 Q. Right.

5 But you use the company's ARCOS
6 data in McKesson -- let me write that down,
7 "with other sources."

8 But for McKesson, for
9 example -- or, no, AmerisourceBergen. When
10 y'all held AmerisourceBergen responsible for
11 selling wrong through one of their
12 facilities --

13 You and I looked at that
14 earlier, remember?

15 A. Yes.

16 Q. -- that was based on their
17 ARCOS data --

18 A. It was.

19 Q. -- their own data.

20 Okay. And then the lawyer from
21 Walmart asked you, he said: "Rogue Internet
22 pharmacies, those were the greatest threat of
23 diversion."

24 Remember that?

25 A. Yes.

1 Q. Well, those rogue Internet
2 pharmacies, weren't they basically shut down
3 by around 2009?

4 A. Generally, yes.

5 Q. So if the problem continued
6 past there, the problem can't just be rogue
7 Internet pharmacies. That's simple logic,
8 right?

9 MR. STEPHENS: Object to form.
10 Misstates the testimony.

11 MS. MCCLURE: Form.

12 THE WITNESS: That's correct.

13 QUESTIONS BY MR. LANIER:

14 Q. So I gave you that chart
15 earlier. 2009's right here. It's not like
16 once y'all shut down the rogue Internet
17 pharmacies they didn't continue to be a
18 problem.

19 See what I'm talking about?

20 MS. SWIFT: Object to form.

21 MS. MCCLURE: Form.

22 MR. EPPICH: Object to the use
23 of this document.

24 THE WITNESS: Yes, I see what
25 you're talking about.

1 QUESTIONS BY MR. LANIER:

2 Q. Okay. And again, your answers
3 on these Walmart questions would apply
4 equally to the other folks he was asking
5 questions on behalf of.

6 CVS, they've got their own
7 data, right?

8 A. Yes.

9 Q. Walgreens has got their own
10 data, right?

11 A. Yes.

12 Q. Now, the McKesson lawyer asked
13 you some questions.

14 Do you remember those?

15 A. Not specifically, but...

16 Q. All right. Let's look at some
17 of them.

18 First of all, the McKesson
19 lawyer asked you about the requirement of
20 Section 1301.74(a), and he said: "It's only
21 to see if a customer is registered."

22 Do you remember that?

23 MR. EPPICH: Object to form.

24 Objection to the extent it misstates
25 the question.

1 QUESTIONS BY MR. LANIER:

2 Q. You remember he asked you, he
3 said: "The requirements of the law" -- and
4 he used Exhibit 3, and he put Exhibit 3 up
5 there which has 1301.74(a) -- "before
6 distributing a controlled substance to any
7 person who the registrant does not know to be
8 registered to possess, got to make a good
9 faith inquiry to determine if they were
10 registered to possess the controlled
11 substance."

12 And he asked you about that,
13 remember?

14 A. Yes.

15 Q. Well, have you ever seen those
16 magicians who do a sleight of hand where they
17 distract you over here while they're doing
18 something over there?

19 Are you familiar with that?

20 A. Yes.

21 Q. Okay. He asked you like
22 1301.74(a) is the only part of this law.

23 It's not the only part of the
24 law, is it?

25 MR. EPPICH: Object to form.

1 Misstates the question.

2 THE WITNESS: No, it's not.

3 QUESTIONS BY MR. LANIER:

4 Q. So when he asked you, the
5 requirement of 1301.74(a) is only to see if a
6 customer is registered, that's not the only
7 section that applies to these distributors.

8 They got to do more than that,
9 don't they?

10 MR. EPPICH: Object to form.

11 Vague.

12 THE WITNESS: Yes, they do.

13 QUESTIONS BY MR. LANIER:

14 Q. They got to do subpoint (b)
15 that came after his subpoint (a). I've
16 highlighted it here on Exhibit 3.

17 Do you see it?

18 A. I do.

19 Q. "The registrant," McKesson in
20 this case, "shall design" -- or any of the
21 other distributors -- "shall design and
22 operate a system to disclose to the
23 registrant suspicious orders of controlled
24 substances. The registrant shall inform the
25 field division office of the administration

1 in his area of suspicious orders when
2 discovered."

3 By the way, it says "when
4 discovered," doesn't it?

5 A. Yes.

6 Q. This is that 1970s law?

7 A. It is.

8 Q. "Suspicious orders include
9 orders of unusual size, orders deviating
10 substantially from a normal pattern, orders
11 of unusual frequency."

12 That's included, but that's not
13 an exclusive list of what makes something
14 suspicious, fair?

15 MR. EPPICH: Objection. Calls
16 for a legal conclusion. Foundation.

17 THE WITNESS: Yes, that's fair.

18 QUESTIONS BY MR. LANIER:

19 Q. All right. And so my question
20 is, he followed up by saying this: "Does
21 1301.74 say distributors can't ship
22 suspicious orders?"

23 Remember that?

24 A. Yes.

25 MR. EPPICH: Objection. Form.

1 Misstates the question.

2 QUESTIONS BY MR. LANIER:

3 Q. Well, that's not the part that
4 tells you you can't ship them. You're not
5 allowed to sell something that you are
6 suspicious may be used for illegal purposes,
7 are you?

8 MS. MCCLURE: Form.

9 Foundation. Calls for a legal
10 conclusion. Misstates.

11 MS. WICHT: Vague.

12 THE WITNESS: That's correct.

13 QUESTIONS BY MR. LANIER:

14 Q. Okay. Good.

15 Anyway, even setting the law
16 aside, what's most important, community
17 health and safety or company profits --

18 MR. EPPICH: Objection.

19 QUESTIONS BY MR. LANIER:

20 Q. -- for selling illegal drugs?

21 MR. EPPICH: Objection to form.
22 Argumentative.

23 MS. WICHT: Scope.

24 MS. MCCLURE: Foundation.

25

1 QUESTIONS BY MR. LANIER:

2 Q. This is a no-brainer. You
3 ought to be able to get this one?

4 MS. MCCLURE: Objection.
5 Argumentative.

6 MR. BENNETT: I'll join in the
7 objection. Argumentative.

8 MR. LANIER: All right. Let me
9 go back to the original question.

10 SPECIAL MASTER COHEN:
11 Sustained.

12 QUESTIONS BY MR. LANIER:

13 Q. Even setting the law aside,
14 what's most important, community health and
15 safety or company profits from selling
16 illegal drugs?

17 MR. EPPICH: Object to form.
18 Foundation.

19 MS. WICHT: Scope.

20 THE WITNESS: In my opinion,
21 it's the health and safety.

22 QUESTIONS BY MR. LANIER:

23 Q. And then the McKesson lawyer
24 asked you this one. He said: "Isn't it true
25 there are other causes of the opioid crisis,

1 like illegal prescribing?"

2 Remember that?

3 A. Yes.

4 Q. "Question: A good suspicious
5 order monitoring system can even help catch
6 illegal prescribing, can't it?"

7 MR. EPPICH: Objection to form.

8 MR. HAHN: Objection.

9 THE WITNESS: Yes, it can.

10 QUESTIONS BY MR. LANIER:

11 Q. And then he said:
12 "Distributors can't control what happens to
13 pills once the pills are delivered to the
14 customer of the pharmacy?"

15 Remember that one?

16 A. Yes.

17 MR. EPPICH: Objection.

18 QUESTIONS BY MR. LANIER:

19 Q. But the distributor has a ton
20 of control before that, don't they?

21 MR. EPPICH: Objection. Form.
22 Foundation. Vague.

23 THE WITNESS: Yes, they do.

24 QUESTIONS BY MR. LANIER:

25 Q. And then the McKesson lawyer

1 said: "The DEA" -- and he talked about your
2 staffing and your Internet policies -- the
3 DEA staffing, not yours, and Internet
4 policies -- or Internet pharmacies, and
5 whether or not they had enough staff.

6 And you said: "I don't know if
7 they did or didn't."

8 You wouldn't go along with him
9 on that, remember?

10 MR. EPPICH: Objection.

11 Argumentative. Misstates the
12 testimony and questions.

13 THE WITNESS: Yes, I remember
14 that.

15 QUESTIONS BY MR. LANIER:

16 Q. Well, my question is pretty
17 simple. If the companies do their jobs
18 right, the DEA had plenty of manpower when
19 you were there, didn't it?

20 MR. EPPICH: Objection. Calls
21 for a legal conclusion.

22 QUESTIONS BY MR. LANIER:

23 Q. Based on your opinion?

24 MR. EPPICH: Objection. Form.

25 MS. MCCLURE: Objection.

1 Scope.

2 MR. BENNETT: Objection.

3 Scope.

4 You're not speaking on behalf
5 of the DEA. You may give your
6 personal opinion.

7 QUESTIONS BY MR. LANIER:

8 Q. True?

9 A. I really can't comment on that
10 because there's so many other things that
11 DEA's involved in. It's not just --

12 Q. Ah, and you shouldn't comment
13 on that stuff. You're right. You're right.
14 I'll pull that down. I don't want y'all to
15 divulge DEA secrets.

16 Okay. Shifting gears to some
17 stuff from AmerisourceBergen's lawyer and
18 others.

19 You were asked this question by
20 AmerisourceBergen yesterday: "In the course
21 of your role as a diversion investigator and
22 a group supervisor, you accepted these
23 excessive purchase reports as compliant with
24 the Controlled Substances Act?"

25 Do you remember that?

1 A. Yes.

2 Q. Sir, but after-the-fact
3 reporting of suspicious orders has never been
4 in compliance with federal law according to
5 your understanding of the DEA's guidance
6 provided to registrants, true?

7 MS. MCCLURE: Objection. Form.
8 Scope. Vague. Misstates the witness'
9 prior testimony. Foundation. Asked
10 and answered.

11 MR. BENNETT: You can answer.

12 THE WITNESS: It was the
13 practice, but they may not have been
14 in compliance with the regulations.

15 QUESTIONS BY MR. LANIER:

16 Q. Right?

17 They may have been breaking the
18 regulations for a long time --

19 MS. MCCLURE: All same
20 objections.

21 QUESTIONS BY MR. LANIER:

22 Q. -- right?

23 A. Yes.

24 Q. Okay. I mean, that's part of
25 what this is about, you understand?

1 A. Yes.

2 Q. Okay. Good.

3 And I just want to clarify a
4 couple things for the record. The lawyer
5 just objected and said I mischaracterized
6 your testimony. I've got here the actual
7 draft from the court reporter. I don't think
8 I mischaracterized it. I think I wrote it
9 exactly the way it is, so I don't know what
10 she meant when she said I mischaracterized
11 it.

12 But you see that's exactly what
13 you said yesterday? It's exactly what the
14 question was.

15 MS. MCCLURE: That was in
16 response to your second question, not
17 the first.

18 QUESTIONS BY MR. LANIER:

19 Q. Do you see that?

20 A. I see that.

21 Q. And now she says that was in
22 response to my second question, not the
23 first.

24 Sir, you hadn't testified about
25 the second question until I asked you, true?

1 MS. MCCLURE: Again,
2 mischaracterizes.

3 THE WITNESS: True.

4 QUESTIONS BY MR. LANIER:

5 Q. I got that testimony on that
6 from a Mr. Thomas Prevoznik.

7 Do you know him?

8 A. I do.

9 Q. Mr. Prevoznik was the actual
10 designate by the DEA to speak on behalf of
11 the DEA, as opposed to you, who's just
12 speaking as you, right?

13 A. Correct.

14 Q. And I did write it exactly
15 right, in spite of the lawyer's objection.

16 "Has after-the-fact reporting
17 of suspicious orders ever been in
18 compliance" -- ever been in compliance --
19 "with federal law according to the DEA's
20 guidance provided to registrants?"

21 The answer was: "No." And
22 that's from the DEA witness.

23 So he would agree with you that
24 this is a true statement: After-the-fact
25 reporting has never been in compliance,

1 right?

2 MS. WICHT: Object to form.

3 MS. MCCLURE: Form.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. LANIER:

6 Q. That's why the law says it's
7 when -- I'm using Exhibit 30 -- yeah, here it
8 is. Exhibit 3. The law is specific and says
9 you're supposed to turn in suspicious orders
10 "when discovered by the registrant," not at
11 the end of the month after you've sold them
12 and made the money?

13 MS. MCCLURE: Form.

14 QUESTIONS BY MR. LANIER:

15 Q. Right?

16 MS. MCCLURE: Calls for a legal
17 conclusion.

18 THE WITNESS: It does say "when
19 discovered," yes.

20 QUESTIONS BY MR. LANIER:

21 Q. And you knew who Linden Barber
22 was, didn't you?

23 A. Yes.

24 MR. LANIER: I want to take a
25 break for five minutes, please.

1 VIDEOGRAPHER: We're going off
2 record. The time is 11:08.

3 (Off the record at 11:08 a.m.)

4 VIDEOGRAPHER: We're going back
5 on record. Beginning of Media File 5.
6 Time is 11:23.

7 QUESTIONS BY MR LANIER:

8 Q. Sir, just a few final things I
9 want to make sure that I've covered, and I'll
10 pass the witness, and we'll be through with
11 your road for this moment, though I think I
12 get to come back and we'll travel another
13 road together in a little bit.

14 The DEA may answer a specific
15 question about whether part of a system is
16 appropriate, and the DEA will give its
17 opinion.

18 We know that based on your
19 testimony yesterday, right?

20 MR. BENNETT: Objection.

21 Scope.

22 He doesn't speak for the DEA.

23 He may speak about his practices while
24 he was at the DEA.

25 MR. LANIER: Great point.

1 QUESTIONS BY MR. LANIER:

2 Q. When you were at the DEA, you
3 yourself and people you observed may answer a
4 specific question about whether or not part
5 of a system's appropriate.

6 The DEA hasn't given its
7 opinion on that to distributors and others,
8 right?

9 A. Generally, yes.

10 Q. But the DEA does not do legal
11 work for the industry, true?

12 MR. BENNETT: Same objection.
13 Same instruction.

14 QUESTIONS BY MR. LANIER:

15 Q. Based on what you know?

16 MR. EPPICH: Object to form.

17 THE WITNESS: Based on what I
18 know, that's true.

19 QUESTIONS BY MR. LANIER:

20 Q. And industry, based on what you
21 know, is required to interpret and follow the
22 law. That's part of the honor system and the
23 law if they want to be allowed to make money
24 selling opioids, true?

25 MS. MCCLURE: Objection.

1 Compound.

2 MS. WICHT: Objection to form.

3 MR. EPPICH: Object to form.

4 THE WITNESS: It's part of the
5 requirement if they want to continue
6 to be registered to handle controlled
7 substances.

8 QUESTIONS BY MR. LANIER:

9 Q. In other words, if they want to
10 legally sell opioids, industry is required to
11 interpret and follow the law, true?

12 A. True.

13 Q. Now, the AmerisourceBergen
14 lawyer pointed out yesterday that determining
15 suspicious orders is subjective. There's not
16 a formula that is a litmus test where you can
17 say yes/no automatically.

18 A computer is not going to do
19 it, right?

20 A. That's correct.

21 Q. This is a reason that you need
22 to be hypervigilant if you're a registrant,
23 if you're a distributor. You need to truly
24 know your customer and truly look for
25 suspicious orders and truly do your due

1 diligence if it looks like something might be
2 suspicious, true?

3 MS. MCCLURE: Objection.

4 Vague. Compound.

5 MR. EPPICH: Object to form.

6 Calls for a legal conclusion.

7 THE WITNESS: Yeah, the
8 registrants need to be vigilant.

9 QUESTIONS BY MR. LANIER:

10 Q. And in fairness, they need to
11 be very vigilant, or I put it hypervigilant.
12 They really need to pay attention to this,
13 don't they?

14 MS. MCCLURE: Same objections.

15 MR. EPPICH: Object to form.

16 Calls for a legal conclusion.

17 THE WITNESS: Yes.

18 QUESTIONS BY MR. LANIER:

19 Q. This is based on your
20 understanding. I know you're not
21 interpreting the law. But this is from your
22 perspective the legal responsibility of the
23 distributor, true?

24 MR. EPPICH: Object to the
25 form. Calls for a legal conclusion.

1 THE WITNESS: True.

2 QUESTIONS BY MR. LANIER:

3 Q. Now, you were asked another
4 curious question yesterday about is it
5 possible that 90 percent of orders shipped
6 are suspicious, and you said you don't see
7 how 90 percent of the orders shipped to be a
8 suspicious number.

9 Do you remember that?

10 A. I do.

11 Q. Now, did you ever read the
12 deposition given by the DEA in this case,
13 someone speaking on behalf of the DEA?

14 A. I did not.

15 Q. I want to show you part of
16 Mr. Prevoznik's deposition. It's Volume II
17 from April 18, 2019. Let me give you some of
18 the testimony that I'm going to reference so
19 you can look at it.

20 I'm specifically interested in
21 what starts at the bottom of page 628. This
22 is questioning by Mr. Farrell. Mr. Farrell
23 has been one of the key lawyers for years in
24 trying to chase down this data and
25 information.

1 Okay?

2 MR. EPPICH: Object to form.

3 MS. MCCLURE: Object to the
4 narrative.

5 QUESTIONS BY MR. LANIER:

6 Q. Do you know him? He's a
7 handsome fellow from West Virginia, real
8 athletic.

9 MS. LEVY: Objection.

10 THE WITNESS: I don't recall
11 him.

12 QUESTIONS BY MR. LANIER:

13 Q. Okay. He's sitting right over
14 there.

15 Seriously, Mr. Farrell asked:
16 "Do you agree" -- this is to the DEA. "Do
17 you agree if a wholesale distributor gets a
18 flag of a suspicious order, that they've
19 determined to be a suspicious order, and that
20 they block that shipment, that they should
21 terminate all future sales to that same
22 customer until they can rule out that
23 diversion is occurring?"

24 Do you see the question?

25 A. I do.

1 Q. And you're going to find this
2 really stunning, but there's lots of
3 objections before the answer.

4 Everybody should object to me
5 saying that.

6 Strike what I just said. That
7 actually is objectionable.

8 The answer is: "Yes, I would
9 agree."

10 Do you see that?

11 A. I do.

12 Q. So if, in fact, that once there
13 is a flag of a suspicious order, someone's
14 determined something's suspicious, a
15 suspicious order, and as a result, all of the
16 orders to that pharmacy, customer, are
17 stopped until a real determination is made
18 that rules out diversion, that could really
19 change the picture and actually make
20 90 percent of orders shipped suspicious --

21 MS. SWIFT: Object to the form
22 of the question.

23 QUESTIONS BY MR. LANIER:

24 Q. -- in certain years that are at
25 issue here.

1 Would you agree?

2 MS. SWIFT: Object to form.

3 MR. EPPICH: Object to form.

4 Incomplete hypothetical. Calls for
5 speculation.

6 MS. MCCLURE: Foundation.

7 THE WITNESS: No, I wouldn't
8 agree with that.

9 QUESTIONS BY MR. LANIER:

10 Q. Well, let's just be real clear
11 then.

12 You hadn't done the math, had
13 you?

14 A. This is the first time I've
15 seen this.

16 Q. In other words, when the lawyer
17 asked you yesterday, "Would you be" -- "Would
18 you agree with the idea that 90 percent of
19 the orders shipped are suspicious?" and you
20 said, "No," you hadn't done that math, have
21 you?

22 MS. WICHT: Object to form.

23 Mischaracterizes.

24 QUESTIONS BY MR. LANIER:

25 Q. You're guessing?

1 MS. WICHT: Mischaracterizes
2 the testimony yesterday.

3 THE WITNESS: Yes, that's my
4 opinion.

5 QUESTIONS BY MR. LANIER:

6 Q. Yeah. It's your opinion based
7 upon no research?

8 MS. MCCLURE: Objection.

9 QUESTIONS BY MR. LANIER:

10 Q. You have not researched the
11 question of how many pharmacies had
12 suspicious orders that had not done their due
13 diligence and had not resolved them and
14 continued to sell.

15 You have not done the math on
16 that, have you?

17 A. I have not.

18 MS. WICHT: Objection to form.

19 QUESTIONS BY MR. LANIER:

20 Q. Thank you.

21 And then the last thing I want
22 to do on your industry work and our stop
23 there is -- lest there be any concern, I want
24 to go over and ask you if you are aware of
25 certain things, if you have personal

1 knowledge.

2 Rite Aid, they're a pharmacy,
3 right?

4 A. Yes.

5 Q. Do you know about them paying a
6 \$5 million fine in 2009 for filling
7 prescriptions that were not issued for
8 legitimate medical purposes and failing to
9 notify the DEA of significant thefts and
10 losses that they were required -- and other
11 records they were required to keep under the
12 Controlled Substances Act?

13 MR. BENNETT: Objection.

14 MR. LAVELLE: Object to form.

15 MR. BENNETT: Objection.

16 Scope.

17 You may answer that question
18 yes or no only.

19 THE WITNESS: No.

20 QUESTIONS BY MR. LANIER:

21 Q. Did you know about CVS in 2013
22 having to pay an \$11 million fine for
23 recordkeeping violations under the Controlled
24 Substances Act?

25 MR. BENNETT: You can answer.

1 THE WITNESS: Yes or no?

2 QUESTIONS BY MR. LANIER:

3 Q. Yes, sir.

4 MR. BENNETT: You can answer
5 the question.

6 THE WITNESS: Yes.

7 QUESTIONS BY MR. LANIER:

8 Q. Did you know about CVS in 2015
9 paying a \$22 million fine?

10 A. No.

11 Q. 2016, paying an \$8 million
12 fine?

13 A. No, I don't recall that.

14 Q. 2017, paying a \$5 million fine?

15 A. No.

16 Q. Do you know about Walgreens in
17 2013 paying an \$80 million fine --

18 MS. SWIFT: Objection. Form.

19 QUESTIONS BY MR. LANIER:

20 Q. -- for filling prescriptions
21 that they knew or should have known were not
22 issued for a legitimate medical purpose?

23 MS. SWIFT: Object to form.

24 MR. BENNETT: Objection.

25 Scope.

1 You may answer that question
2 yes or no only.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. LANIER:

5 Q. Well, these aren't rogue
6 Internet pharmacies, are they?

7 A. No.

8 Q. Do you know any other fines of
9 pharmacies off the top of your head?

10 A. I do not.

11 Q. So fining the companies, have
12 you found fining the companies doesn't always
13 seem to work?

14 MR. EPPICH: Object to form.

15 THE WITNESS: That's correct.

16 QUESTIONS BY MR. LANIER:

17 Q. The DEA used to have at its
18 disposal a tool it no longer has, true?

19 MR. BENNETT: Objection.

20 Vague.

21 MS. MCCLURE: Form.

22 THE WITNESS: I'm not aware
23 that any tools have been taken away.

24 QUESTIONS BY MR. LANIER:

25 Q. Are you familiar with the

1 Marino Bill?

2 MS. MCCLURE: Vague.

3 THE WITNESS: No.

4 QUESTIONS BY MR. LANIER:

5 Q. It was subject to that article
6 that we looked at earlier that had the yellow
7 dots, the Marino Bill -- I think there's just
8 one N in Marino -- that took away some of the
9 powers of the DEA.

10 You're not familiar with that?

11 MS. MCCLURE: Form.

12 Foundation. Mischaracterizes.

13 THE WITNESS: I had not heard
14 of that name, but I've heard of a bill
15 that has different requirements than
16 they had in the past.

17 QUESTIONS BY MR. LANIER:

18 Q. So you don't have any knowledge
19 of whether or not the DEA still has today all
20 of the same tools at its disposal that it had
21 when you were there?

22 A. No, I don't know.

23 MR. LANIER: Okay. Brings me
24 to the end of the road. I'll pass the
25 witness.

1 MS. MCCLURE: Off the record.

2 VIDEOGRAPHER: We're going off

3 record. The time is 11:36.

4 (Mapes Exhibit 32 marked for
5 identification.)

6 (Off the record at 11:36 a.m.)

7 VIDEOGRAPHER: We're going back

8 on the record. Beginning of Media

9 File Number 6. The time is 12:59.

10 RE-EXAMINATION

11 QUESTIONS BY MS. MCCLURE:

12 Q. Good afternoon, Mr. Mapes.

13 A. Good afternoon.

14 Q. Just a reminder, my name is
15 Shannon McClure. I represent
16 AmerisourceBergen Drug Corporation. I just
17 have a few follow-up questions for you today.

18 I'm going to be talking about
19 certain things that Mr. Lanier talked to you
20 about, so it may seem less like the roadmap
21 that Mr. Lanier had and a little more
22 scattershot. So if at any time you'd like me
23 to clarify a little bit more about where I
24 am, that's the nature of conducting this part
25 of the examination, which is a response to

1 what the plaintiffs have done.

2 Will you agree that if at any
3 time you would like me to orient you as to
4 what we're talking about, just let me know.

5 Okay?

6 A. Okay.

7 Q. Do you recall Mr. Lanier asking
8 you about some audits and work that you had
9 done on behalf of AmerisourceBergen Drug
10 Corporation after you had left DEA?

11 A. Yes.

12 Q. And that included audits of
13 AmerisourceBergen's order monitoring program
14 and diversion control program, right?

15 A. Yes.

16 Q. And those are audits that we
17 talked about yesterday, first, before
18 Mr. Lanier questioned you today when we
19 talked about your post-DEA consulting work,
20 right?

21 A. Yes.

22 Q. And Mr. Lanier showed you a
23 privilege log marked as Exhibit 20 and asked
24 you about the fact that several entries here
25 indicated that you were involved in these.

1 Do you recall looking at this
2 document, Exhibit Number 20?

3 A. Yes.

4 Q. Okay. And those audits that
5 you conducted on behalf of AmerisourceBergen,
6 we did, in fact, talk about yesterday that
7 you had done several years of audits in which
8 you generally found that the company was in
9 compliance.

10 Do you recall that?

11 A. Yes.

12 Q. And that's basically walking
13 the walk, in the language that Mr. Lanier had
14 used. You found in your review of the order
15 monitoring program of AmerisourceBergen that
16 AmerisourceBergen was walking the walk,
17 right?

18 A. Generally, yes.

19 Q. And so Mr. Lanier presented
20 this document to you and the jury, and it
21 seemed -- and acted like all those audits
22 were, in fact, not produced in this case and
23 were not going to be available and had not
24 been produced by AmerisourceBergen.

25 Was that your understanding of

1 the situation yesterday --

2 A. Yeah.

3 Q. -- or earlier today? I'm
4 sorry.

5 A. Yes.

6 Q. Okay. He didn't tell you that,
7 in fact, every single one of the documents on
8 this list that we're looking at here, which
9 comprises two pages, had, in fact, been
10 produced by AmerisourceBergen. He didn't
11 tell you that, right?

12 A. That's correct.

13 Q. Okay. Thank you.

14 Mr. Mapes, does DEA have ethics
15 rules in place about post-DEA employment for
16 DEA employees like yourself who leave or
17 retire?

18 MR. BENNETT: Objection.

19 Scope.

20 You can answer based on your
21 personal knowledge but not on behalf
22 of DEA.

23 THE WITNESS: Yes, there are.

24 QUESTIONS BY MS. MCCLURE:

25 Q. And you followed those

1 post-employment ethics rules?

2 A. Yes.

3 Q. Thank you.

4 Mr. Lanier's questions to you
5 seemed to imply and seemed to say to me, at
6 least, and perhaps the jury as well, that
7 there was -- that you, as a former DEA
8 agent -- or former DEA diversion investigator
9 and your various roles in DEA, had done
10 something wrong by leaving DEA and then going
11 to work for industry.

12 Do you recall those questions?

13 A. I recall the questions, yes.

14 Q. Okay. And, in fact, your role
15 as a consultant, am I stating it accurately
16 to say that you were trying to help companies
17 be compliant with DEA regulations and policy
18 and the Controlled Substances Act?

19 A. That's correct.

20 Q. And compliance with the
21 Controlled Substances Act would be something
22 that the DEA, in your experience, would want
23 and expect of registrants, right?

24 A. That's correct.

25 Q. And so your goal and DEA's goal

1 are the same in your conducting of your
2 consulting business today, or for the --
3 since you left DEA, not today, correct?

4 MR. BENNETT: Objection.
5 Scope.

6 You may speak in your personal
7 capacity, but you may not speak on
8 behalf of DEA in answering this
9 question.

10 THE WITNESS: Yes, they are.

11 QUESTIONS BY MS. MCCLURE:

12 Q. And do you think that there's
13 anything wrong that you've done in consulting
14 for various industry participants to help
15 them be compliant with the Controlled
16 Substances Act and DEA policies and
17 procedures in your post-DEA work?

18 A. No.

19 Q. And moving on to a different
20 topic -- as I said, this would be less like a
21 roadmap and more like stops along the way.

22 To orient you to what we're
23 going to be talking about next, I want to
24 show you the document that was marked as
25 Exhibit 4 and Exhibit 4A, same document, just

1 different Bates numbers, which are a series
2 of letters between 1996 and 1998 regarding
3 DEA's approval of Amerisource -- I'm sorry,
4 of Bergen's newly developed system to
5 identify and report suspicious orders for
6 controlled substances.

7 Do you recall this document?

8 A. Yes.

9 Q. And Mr. Lanier's questions to
10 you seemed to suggest that he thought that
11 this document related only to
12 methamphetamine, the Methamphetamine Control
13 Act, and phentermine is the -- or Sudafed.

14 But is it your understanding
15 that this document relates only to
16 methamphetamine or pseudoephedrine, or does
17 it in your mind relate more broadly?

18 A. I believe it relates to
19 controlled substances and regulated
20 chemicals.

21 Q. Okay. And so the language here
22 is that this is "an approval of the newly
23 developed system to both identify and report
24 suspicious orders for controlled substances
25 and regulated chemicals," right?

1 A. Yes.

2 Q. And, in fact, if we look at the
3 original letter -- one moment.

4 Well, I'll just use the one
5 that has my underlining in it because,
6 really, what does it matter.

7 If we look at the original
8 letter dated September 30, 1996, that
9 Mr. Zimmerman wrote to Mr. Gitchel, it, in
10 fact, talks about "an innovative, new system
11 to both monitor and report customer orders of
12 controlled substances which fit the
13 suspicious order criteria outlined in 21 CFR
14 1301.74(b)."

15 Do you see that?

16 A. Yes.

17 Q. Okay. And that's -- so it is
18 your understanding, having reviewed this
19 series of letters marked as Exhibit 4 and
20 Exhibit 4A, that that's an approval of
21 AmerisourceBergen's entire suspicious order
22 monitoring and diversion control system, not
23 just dealing with listed chemicals or
24 Sudafed -- or the listed chemical that would
25 go into the manufacturing of methamphetamine?

1 A. That would be the Sudafed.

2 Q. Okay. So this system, this
3 approval, is for the entire diversion control
4 program and suspicious order monitoring
5 system, based on what you've seen in these
6 letters?

7 A. For the entire suspicious order
8 monitoring system, yes.

9 Q. Okay. Thank you.
10 And so looking again at a
11 demonstrative document that Mr. Lanier had
12 shown you, I want to make sure I have this
13 right, that this approved not only the method
14 of providing information but the system that
15 was used to identify suspicious orders as
16 well, correct?

17 A. Yes.

18 Q. And that this was not just
19 related to methamphetamines, it was related
20 to all controlled substances, whether it's
21 methamphetamine, opioids or anything else
22 that's regulated under 1301.74(b), correct?

23 A. Yes.

24 (Mapes Exhibit 33 marked for
25 identification.)

1 QUESTIONS BY MS. MCCLURE:

2 Q. I'm going to hand you a
3 document that's been marked Exhibit 33.

4 Let me know when you've had a
5 chance to review that.

6 A. Okay.

7 Q. And so you testified in a
8 lawsuit in West Virginia in 2016, correct?

9 A. Yes.

10 Q. And in that you testified that
11 the shift from ship and then report to
12 instead halt and investigate was a gradual
13 change, right?

14 A. Yes, it was.

15 Q. And that the regulations did
16 not change, but the DEA's interpretation of
17 them did, right?

18 A. Yes.

19 Q. And that companies were
20 responding to DEA's changed interpretation
21 and then coming up with programs to handle
22 that new different expectation, right?

23 A. That's correct.

24 Q. And there was not a date
25 certain by which companies were expected or

1 anticipated to implement the changes to DEA's
2 new interpretation of 1301.74(b)?

3 A. That's correct.

4 Q. And so here Mr. Lanier had
5 excerpted a statement you had made to me
6 yesterday when I was originally talking to
7 you, right, and that you had accepted these
8 excessive purchase reports as compliant with
9 the Controlled Substances Act, right?

10 That's what you testified to
11 yesterday?

12 A. Yes.

13 Q. And then Mr. Lanier presented
14 you with this document that said that
15 essentially after-the-fact reporting of
16 suspicious orders has never been in
17 compliance with federal law according to the
18 DEA's guidance.

19 That testimony, to the extent
20 that this actually reflects your testimony,
21 which I don't believe it does, is not
22 actually consistent with the testimony you
23 gave earlier yesterday or with the testimony
24 you gave in 2016 when you were under oath in
25 that proceeding, correct?

1 MR. BENNETT: Objection. Form.

2 MR. LANIER: Objection. Form.

3 MR. BENNETT: Misstates

4 testimony.

5 THE WITNESS: The regulation

6 didn't change. So the regulation was

7 still there, but the practice was to

8 allow them to send the excessive

9 purchase reports and that that was

10 considered to be in compliance, even

11 though the regulation hadn't changed

12 to allow that or to not allow that.

13 QUESTIONS BY MS. MCCLURE:

14 Q. And so that was -- the

15 submission of excessive purchase reports was

16 considered, in your experience at DEA, to be

17 in compliance with the Controlled Substances

18 Act for the period of time that those reports

19 were accepted, correct?

20 A. Yes.

21 Q. Just one moment.

22 And in addition, I just asked

23 you a question as to whether they were in

24 compliance with the Controlled Substances

25 Act.

1 They were also then in
2 compliance -- I just asked you a question
3 that stated that they were in compliance --
4 the acceptance of the excessive purchase
5 reports is being compliant -- was compliant
6 with the Controlled Substances Act.

7 They were also compliant with
8 the regulations that underscored and
9 implemented that act, correct?

10 MR. BENNETT: Objection.
11 Scope.

12 You may answer based on your
13 personal understanding, but you may
14 not speak on behalf of DEA.

15 THE WITNESS: Personally we
16 accepted them, the excessive purchase
17 reports, as compliant for the
18 suspicious order monitoring, yes.

19 MS. MCCLURE: Okay. Thank you,
20 Mr. Mapes.

21 I have no further questions,
22 and at this time I turn my time over
23 to counsel for additional defendants.

24 Thank you very much.

25 MR. LANIER: Make sure there's

1 no fuss. I'm going to have one of the
2 other lawyers do our recross.

3 Nobody's got any problem with
4 that, do they?

5 Thank you.

6 (Mapes Exhibit 34 marked for
7 identification.)

8 RE-EXAMINATION

9 QUESTIONS BY MR. EPPICH:

10 Q. Good afternoon, Mr. Mapes. My
11 name is Chris Eppich. Once again, I'm from
12 the McKesson company.

13 A. Good afternoon.

14 Q. I'm going to hand you what I've
15 marked as Exhibit Number 34 in this
16 litigation.

17 Exhibit 34, Mr. Mapes, is a
18 partial list of the attorneys in this case.

19 Do you see at the top of the
20 page it says, "1:17-md-02804-DAP, In Re:
21 National Prescription Opiate Litigation, Dan
22 Aaron Polster presiding"?

23 Do you see that, sir?

24 A. I do.

25 Q. And then it says "attorneys."

1 Do you see that, sir?

2 A. Yes.

3 Q. If we could turn to page 2 of
4 Exhibit 34, the third name down, sir, Richard
5 W. Fields, do you recognize that name?

6 A. Yes.

7 Q. Is Mr. Fields the attorney that
8 you met with during the summer and the fall
9 2018?

10 A. Yes, he's one of them.

11 Q. And do you see under
12 Mr. Fields' name he has his firm name,
13 Fields, PLLC?

14 Do you see that?

15 A. Yes.

16 Q. And then the address of his
17 firm?

18 Do you see that?

19 A. Yes.

20 Q. Did you have your meetings at
21 the Fields law firm in 2018 at that address,
22 if you recall?

23 A. I don't believe it was.

24 Q. Do you see under Mr. Fields'
25 address and e-mail it says the words "lead

1 attorney, attorney to be noticed"?

2 Do you see that, sir?

3 A. Yes.

4 Q. Earlier today, plaintiffs'
5 counsel asked you questions about two of its
6 expert witnesses, Mr. Jim Geldhof and Mr. Jim
7 Rafalski.

8 Do you remember that
9 discussion?

10 A. Yes, I do.

11 Q. Now, in your time at DEA, did
12 you have an opportunity to work on projects
13 with Mr. Geldhof?

14 MR. BENNETT: Objection.

15 Scope.

16 You can answer that question
17 yes or no only.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. EPPICH:

20 Q. You had the opportunity to
21 evaluate his work product?

22 A. No.

23 Q. Do you have any personal
24 knowledge as to his experience,
25 qualifications or effectiveness with DEA

1 diversion issues?

2 A. Yes.

3 Q. Did you have an opportunity to
4 work with Mr. Rafalski while at DEA?

5 A. No.

6 Q. Did you ever have an
7 opportunity to evaluate Mr. Rafalski's work?

8 A. No.

9 Q. Did you have an opportunity --
10 oh, strike that.

11 So you have no personal
12 knowledge as to Mr. Rafalski's experience,
13 qualifications or effectiveness with DEA
14 diversion issues; is that correct?

15 A. That's correct.

16 Q. If I could ask you to turn to
17 Exhibit 26.

18 Sir, do you have Exhibit 26 in
19 your hand?

20 A. Yes, I do.

21 Q. Plaintiffs' counsel asked you
22 some questions about your e-mail on the
23 bottom of page 1 and continuing on to page 2.

24 Do you remember those
25 questions?

1 A. Yes.

2 Q. Now, Mr. Mays at
3 AmerisourceBergen then responded to your
4 original e-mail in this chain. He responded
5 on Tuesday, August 16, 2005.

6 Do you see that e-mail on
7 page 1?

8 A. I do.

9 Q. He says, "Mike, thanks for the
10 info. I would love to know the name of the
11 pharmacy. It looks like the picture in the
12 presentation indicates that Example Number 2
13 is a warehouse of some type. I'm very
14 concerned that this type of location would
15 have received retail pharmacy licensing and a
16 DEA registration in the first place."

17 Do you see that, sir?

18 A. I do.

19 Q. And you respond at the top of
20 the page on August 16, 2005. You respond to
21 Mr. Mays and you say, "Steve, we are also
22 concerned that a pharmacy such as the one in
23 the picture could be licensed by the state
24 authorities and obtain a DEA registration.
25 For that reason, DEA is physically inspecting

1 pharmacy locations in some parts of the
2 country before they are authorized to receive
3 a DEA registration to be sure that they are,
4 in fact, a retail pharmacy. DEA can no
5 longer rely on a state physical inspection
6 before a state license is issued."

7 Do you see that, sir?

8 A. I do.

9 Q. Now, August 2005, that was
10 during the distributor briefings that you
11 were providing to certain distributors on
12 Internet pharmacy issues, correct?

13 A. Yes.

14 Q. And you shared ABDC's concern
15 that a pharmacy such as the one that you
16 discussed with ABDC could receive a DEA
17 registration, correct?

18 A. Yes.

19 Q. Now, prior to this time, DEA
20 did not inspect pharmacies before approving
21 the pharmacy applicant's registration,
22 correct?

23 DEA was -- let me just stop
24 there.

25 Let me strike it. I'll ask it

1 again.

2 Now, prior to this time, DEA
3 did not inspect pharmacies before approving
4 the pharmacy's registration, correct?

5 MR. BENNETT: Objection.

6 Scope. This is outside the area that
7 he's authorized. He's also not
8 authorized to speak on behalf of DEA
9 or what DEA did.

10 He may answer based on his
11 personal experience what he or the
12 diversion investigators working under
13 him did.

14 THE WITNESS: We did not
15 routinely inspect physical locations
16 for retail pharmacies.

17 QUESTIONS BY MR. EPPICH:

18 Q. Instead, DEA was relying on
19 state inspections -- states' inspections of
20 pharmacy applicants, right?

21 MR. BENNETT: Objection.

22 Scope. He's not authorized to speak
23 on behalf of DEA or what DEA did.

24 He may testify about what he
25 personally did in his position at DEA

1 and what he relied on.

2 THE WITNESS: Yes, we -- the
3 groups that I was involved with relied
4 on the state license and the fact that
5 there had been an inspection, a
6 physical inspection, to obtain the
7 state license.

8 QUESTIONS BY MR. EPPICH:

9 Q. But the state inspections were
10 not detecting Internet pharmacies, were they?

11 MR. BENNETT: Objection.

12 Scope.

13 You may talk based in your
14 personal knowledge and not on behalf
15 of DEA.

16 THE WITNESS: In my experience,
17 they were not always detecting that.

18 QUESTIONS BY MR. EPPICH:

19 Q. And so DEA changed the policy,
20 right?

21 MR. BENNETT: Objection.

22 Scope.

23 This witness has not been
24 authorized to testify regarding DEA
25 policy or changes in policy.

1 To the extent he has personal
2 experience or knowledge as far as
3 changes, he may say what he observed
4 while he was at DEA.

5 THE WITNESS: My personal
6 experience at the time in the Denver
7 division was that it did not require
8 us to do inspections of retail
9 pharmacy applicants because the state
10 board in Colorado was doing
11 appropriate inspections.

12 QUESTIONS BY MR. EPPICH:

13 Q. But you're aware of other
14 divisions throughout the country where
15 inspections of pharmacies were occurring,
16 correct?

17 A. Yes.

18 Q. Now, in your experience, DEA
19 started to physically inspect pharmacies
20 seeking DEA registrations to distribute --
21 let me strike that.

22 Mr. Mapes, earlier today
23 plaintiffs' counsel asked you some questions
24 about DEA's distributor briefing with
25 McKesson.

1 Do you remember that
2 discussion?

3 A. Yes.

4 Q. And DEA's distributor briefing
5 with McKesson led to a series of telephone
6 conferences and meetings with McKesson as the
7 two discussed the DEA's new guidance and the
8 Internet pharmacy concern, right?

9 A. It did.

10 Q. DEA identified six suspected
11 Internet pharmacies to McKesson as part of
12 these meetings, correct?

13 A. I'd have to -- I don't remember
14 the exact number, but...

15 Q. But the DEA identified
16 suspected Internet pharmacies to McKesson
17 during these meetings?

18 A. Yes.

19 Q. McKesson stopped supplying
20 those pharmacies, right?

21 MR. BENNETT: You can answer,
22 if you know.

23 THE WITNESS: I don't recall
24 specifically without looking at the
25 documentation.

1 QUESTIONS BY MR. EPPICH:

2 Q. Well, in fact, one of the
3 pharmacies that McKesson stopped supplying
4 sued the DEA because McKesson immediately
5 stopped supplying controlled substances to
6 that pharmacy after meeting with DEA.

7 Do you recall that?

8 A. No, I do not.

9 Q. Do you recall testifying at a
10 federal district court hearing in Florida in
11 2006 in the case of United Prescription
12 Services versus Alberto Gonzales and Karen
13 Tardy {sic}?

14 A. I remember testifying in
15 Florida, yes.

16 Q. And do you recall that that
17 testimony was in relation to McKesson's
18 immediate cease of supplying controlled
19 substances to that pharmacy?

20 A. I don't remember the substance
21 of the testimony.

22 Q. But it's fair to say that
23 following the discussions that DEA had with
24 McKesson during these distributor meetings,
25 that McKesson acted promptly to address the

1 concerns of the DEA?

2 MR. BENNETT: Objection.

3 Scope.

4 This witness is not authorized
5 to disclose nonpublic information
6 about DEA activities or investigations
7 that they may have had.

8 To the extent that you can
9 answer this question with publicly
10 available information, you may answer.

11 THE WITNESS: And the question
12 again?

13 QUESTIONS BY MR. EPPICH:

14 Q. I'll restate the question, sir.

15 It's fair to say that following
16 the discussions the DEA had with McKesson
17 during these distributor meetings, that
18 McKesson acted promptly to address the
19 concerns of the DEA?

20 MR. BENNETT: Do you understand
21 my instruction in responding to that
22 question?

23 THE WITNESS: Yes.

24 MR. BENNETT: Okay.

25 THE WITNESS: I can't really

1 say.

2 QUESTIONS BY MR. EPPICH:

3 Q. You don't recall?

4 A. I just don't recall.

5 Q. Now, earlier today the
6 plaintiffs' counsel asked you and showed you
7 a slide. He asked you some questions about
8 other causes of the opioid crisis, e.g.,
9 illegal prescribing.

10 Do you remember this
11 conversation?

12 A. Yes.

13 Q. And he asked you whether or not
14 a good suspicious order monitoring system can
15 help catch that.

16 Do you remember that testimony,
17 sir?

18 A. Yes.

19 Q. Are you familiar with HIPAA?

20 A. Yes.

21 Q. What is HIPAA?

22 A. The Health Insurance Privacy
23 Act or something like that.

24 Q. Now, pursuant to that Act,
25 distributors don't have access to a patient's

1 medical records, correct?

2 A. Generally, no.

3 Q. And distributors are not in the
4 doctor's office when the doctor and the
5 patient are talking, are they?

6 A. Not in my experience, no.

7 Q. Now, you'll recall that
8 plaintiffs' counsel asked you -- he presented
9 the following question to you earlier today
10 in a slide titled "Diversion Control 101."

11 He asked you: "If a company
12 sees a suspicious order, the company has a
13 choice to make, ship/sell or hold and
14 investigate."

15 Do you remember this slide?

16 A. Yes.

17 Q. But this question isn't found
18 in the Controlled Substances Act, is it?

19 A. It doesn't say that
20 specifically in the Controlled Substances
21 Act, no.

22 Q. And it doesn't say this
23 specifically in the regulations, correct?

24 A. No.

25 Q. You started to ask distributors

1 to ask themselves this question as a part of
2 the distributor briefings, correct?

3 A. We did.

4 MR. EPPICH: Thank you,
5 Mr. Mapes. I have no further
6 questions.

7 We can go off the record.

8 VIDEOGRAPHER: We're going off
9 the record. The time is 1:33.

10 (Off the record at 1:33 p.m.)

11 VIDEOGRAPHER: Going back on
12 the record. Beginning of Media
13 File 7. Time, 1:39.

14 MR. EPPICH: Just a quick
15 housekeeping issue.

16 For the record, let's go ahead
17 and mark as Exhibit 4A, document
18 bearing Bates number ABDCMDL00269347
19 through 358.

20 And let's mark as Exhibit 35
21 three pages from the demonstratives
22 that plaintiffs presented this
23 morning, further marked up by
24 defendants.

25 We can go off.

1 (Mapes Exhibit 35 marked for
2 identification.)

3 VIDEOGRAPHER: Going off record
4 at 1:40.

5 (Off the record at 1:40 p.m.)

6 VIDEOGRAPHER: We're going back
7 on record. Beginning Media File 8.
8 The time is 1:59.

9 RE-EXAMINATION

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Good afternoon, Mr. Mapes. We
12 met briefly yesterday, but my name is Laura
13 Fitzpatrick, and I'm here on behalf of the
14 plaintiffs, and I'm going to take over for
15 Mr. Lanier for a little bit.

16 I want to just kind of reorient
17 you and the jury here. I'd like to talk --
18 just a second.

19 I'd like to kind of redirect
20 us, call this my redirect roadmap that
21 Ms. Lanier made for me here.

22 I'd like to take us from the
23 muddy waters that you were brought into over
24 the last, I think, 45 minutes or so, back on
25 to what I'm going to call clarity road.

1 Okay?

2 A. Okay.

3 Q. All right. Now, you were shown
4 by the ABDC lawyer the document that we've
5 referred to as the methamphetamine document,
6 and there were some suggestions that ABDC had
7 a policy that the DEA approved of.

8 Do you recall that?

9 MS. MCCLURE: Form.

10 THE WITNESS: Yes.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. Okay. Now, would you agree
13 with me that a policy is no good if a company
14 doesn't follow it?

15 A. Yes.

16 Q. And would you agree that if
17 someone doesn't put their seat belt on and
18 they get into a car wreck, they may not be
19 protected by the seat belt?

20 MS. MCCLURE: Form.

21 THE WITNESS: Correct.

22 QUESTIONS BY MS. FITZPATRICK:

23 Q. Okay. Thank you.

24 Now, with respect to

25 Ms. McClure's questions to you about the ABDC

1 audits and the privilege log, you said that
2 you found the company just generally
3 compliant; is that right?

4 MS. MCCLURE: Form.

5 THE WITNESS: Yes.

6 QUESTIONS BY MS. FITZPATRICK:

7 Q. Okay. So does that mean that
8 if you only shoplift once a month instead of
9 every time that you enter a store that it's
10 not going to be against the law?

11 Still against the law,
12 correct --

13 MS. MCCLURE: Form. Vague.

14 QUESTIONS BY MS. FITZPATRICK:

15 Q. -- whether you do it once a
16 month or every day?

17 MS. MCCLURE: Form. Vague.

18 Compound. Ambiguous. Scope.

19 THE WITNESS: That's not what I
20 meant by saying "generally compliant."

21 QUESTIONS BY MS. FITZPATRICK:

22 Q. What did you mean?

23 A. I meant that there were minor
24 improvements that could be made, but they
25 were being generally compliant with their

1 policies.

2 Q. Compliant with their policy,
3 correct?

4 A. Yes.

5 Q. Okay. Now, Ms. McClure made a
6 big deal about you only appearing on one page
7 of a privilege log.

8 Do you recall that --

9 MS. MCCLURE: Form. Mis --

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. -- line of questioning?

12 MS. MCCLURE: Form.

13 Mischaracterizes.

14 THE WITNESS: She did say that
15 I was on that page of the privilege
16 log, yes.

17 QUESTIONS BY MS. FITZPATRICK:

18 Q. And only that page, correct?

19 MS. MCCLURE: Objection.

20 Misstates the question.

21 THE WITNESS: I don't recall
22 that, but...

23 QUESTIONS BY MS. FITZPATRICK:

24 Q. Okay. I'll represent to you
25 that Ms. McClure put -- well, let's have the

1 exhibit, actually. I think it was Exhibit
2 Number 1 -- 2?

3 MS. MCCLURE: 20.

4 MS. FITZPATRICK: I'm sorry,
5 20, yes, first of today.

6 QUESTIONS BY MS. FITZPATRICK:

7 Q. Thank you.

8 So, Mr. Mapes, Ms. McClure had
9 you look at Exhibit Number 20.
10 Do you see Exhibit Number 20 on
11 the screen in front of you?

12 A. Yes.

13 Q. And she said this was only one
14 page where you appeared on the ABDC privilege
15 log, correct?

16 MS. MCCLURE: Objection to
17 form. Misstates the record.

18 THE WITNESS: I don't remember
19 her exact language.

20 (Mapes Exhibit 36 marked for
21 identification.)

22 QUESTIONS BY MS. FITZPATRICK:

23 Q. Okay. Well, I'm going to show
24 you what we're going to mark as Exhibit
25 Number 36, which is a memorandum that was

1 done by some of the plaintiffs. Here you go.

2 Do you have Exhibit 36 in front
3 of you?

4 A. Yes.

5 Q. Okay. Now, would you agree
6 here with me, sir, that this is not just one
7 entry on a privilege log, that there are
8 several pages here where you are listed on
9 ABDC's privilege log?

10 And I might add that you're
11 also listed on the Henry Schein privilege log
12 as well as the Par and Endo privilege log.

13 Did you know that, sir?

14 MS. MCCLURE: Objection. Form.
15 Compound. Misstates the record.

16 THE WITNESS: I see that I am
17 several places on the
18 AmerisourceBergen privilege log.

19 QUESTIONS BY MS. FITZPATRICK:

20 Q. Okay. Thank you.

21 So it's more than just one,
22 correct?

23 A. Yes.

24 Q. Okay. Thank you, sir.

25 Now, there were some questions

1 about -- the ABDC lawyer asked you about the
2 gradual change, she called it a gradual
3 change, in what the companies were doing to
4 be in compliance with the law.

5 Do you recall that line of
6 questioning?

7 A. Yes.

8 Q. Okay. Now, did the questions
9 that the ABDC lawyer asked you change
10 anything about your testimony earlier today,
11 that this has always been the law?

12 MS. MCCLURE: Objection to the
13 form. Compound.

14 THE WITNESS: It has always
15 been the law but not necessarily the
16 practice of what DEA accepted.

17 QUESTIONS BY MS. FITZPATRICK:

18 Q. But you would agree with me
19 that whether DEA accepted it or not, the law
20 was the law, correct?

21 MS. MCCLURE: Objection to the
22 form. Calls for a legal conclusion.

23 THE WITNESS: Yes.

24 (Mapes Exhibit 37 marked for
25 identification.)

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. And in fact, speaking of the
3 DEA, I will mark as Exhibit Number 37 an
4 excerpt of the DEA's 30(b)(6) testimony.

5 Here you go, sir.

6 And do you understand what
7 30(b)(6) testimony is, sir?

8 A. Yes.

9 Q. So it means that the person
10 speaking is speaking for the company, not
11 just in their personal capacity, correct?

12 MS. MCCLURE: Form.

13 THE WITNESS: For the Agency,
14 yes.

15 QUESTIONS BY MS. FITZPATRICK:

16 Q. For the Agency.

17 All right. I'd like you to
18 take a look at what Mr. Prevoznik said. He
19 was asked: "Does the DEA take the position
20 that a registrant of controlled substances
21 has a duty to block shipments of suspicious
22 order?"

23 The DEA's answer was: "Yes.

24 He was also asked: "Is that
25 now and always has been the law in the United

1 States of America?"

2 What was his answer, sir?

3 A. "Yes."

4 MS. FITZPATRICK: Thank you.

5 MS. MCCLURE: Objection to the
6 narrative statements from counsel.

7 QUESTIONS BY MS. FITZPATRICK:

8 Q. All right, sir, I'd like to
9 talk a little bit about McKesson.

10 Now, the McKesson lawyer talked
11 to you about relying on state inspectors.

12 Do you recall that testimony?

13 A. Yes.

14 Q. Okay. Let me ask you this:
15 Does the DEA -- is the DEA a multimillion
16 dollar corporation?

17 MR. EPPICH: Object to the
18 form.

19 THE WITNESS: It's not a
20 corporation.

21 QUESTIONS BY MS. FITZPATRICK:

22 Q. Okay. Does it have endless
23 resources?

24 MS. MCCLURE: Form.

25 THE WITNESS: No.

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. Okay. If the companies had
3 maintained effective controls, there wouldn't
4 be much to inspect, would there?

5 MS. MCCLURE: Objection. Asked
6 and answered. Scope, in terms this is
7 supposed to be recross.

8 MR. STEPHENS: And objection.
9 Form.

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. You can answer, Mr. Mapes.

12 A. There would still be a lot to
13 inspect to be sure that they were maintaining
14 effective controls, so the oversight of those
15 companies.

16 Q. But if a company fails to
17 maintain effective controls, there's a lot
18 more to inspect, isn't there?

19 A. That's correct.

20 MS. MCCLURE: Form.

21 QUESTIONS BY MS. FITZPATRICK:

22 Q. Okay. Thank you.

23 All right. Now, there was --
24 another part of the blame game today was
25 the -- when we talked about the Internet

1 pharmacies. The McKesson lawyer talked to
2 you about the Internet pharmacies and how
3 they got their registrations and that their
4 registrations were granted by the DEA.

5 Do you recall that line of
6 questioning?

7 MS. MCCLURE: Objection.

8 Argumentative.

9 MR. EPPICH: Objection to the
10 form and characterization.

11 THE WITNESS: Yes.

12 QUESTIONS BY MS. FITZPATRICK:

13 Q. Okay. Defendants have a duty
14 to know their customers, correct?

15 MR. EPPICH: Objection. Calls
16 for a legal conclusion. Form.

17 THE WITNESS: Yes.

18 MS. MCCLURE: Scope.

19 QUESTIONS BY MS. FITZPATRICK:

20 Q. Is the DEA a registrant?

21 A. Yes.

22 Q. The DEA is a registrant and has
23 a duty to prevent against abuse and
24 diversion?

25 MR. BENNETT: Objection.

1 Scope.

2 You may not speak on behalf of
3 DEA. You may speak on your personal
4 understanding, if you have one.

5 THE WITNESS: DEA's
6 registrations are not as distributors
7 or manufacturers. They're as
8 analytical laboratories and that kind
9 of thing, so they have different
10 requirements.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. Correct.

13 And the DEA does not
14 distribute, manufacture or sell opioids, does
15 it?

16 A. It does not.

17 Q. Okay. Thank you.

18 MR. EPPICH: Objection to the
19 extent the demonstrative does not
20 reflect the testimony.

21 MS. FITZPATRICK: I'll fix that
22 right now.

23 QUESTIONS BY MS. FITZPATRICK:

24 Q. The DEA is not the same type of
25 registrant, correct?

1 A. Yes.

2 Q. Thank you, sir.

3 Now, I believe you already
4 testified to this today but to make sure that
5 there's no confusion for the jury, where do
6 Internet pharmacies get their pills?

7 MS. MCCLURE: Again, asked and
8 answered. Scope. Outside of the
9 scope of redirect.

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Do they get them from the DEA,
12 sir?

13 MS. MCCLURE: All the same
14 objections.

15 THE WITNESS: No.

16 QUESTIONS BY MS. FITZPATRICK:

17 Q. Okay. Does the United States
18 government provide these?

19 A. No.

20 Q. Okay. The manufacturers,
21 distributors and pharmacies provide opioids,
22 correct?

23 MS. MCCLURE: All the same
24 objections, including scope of
25 recross.

1 THE WITNESS: Yes.

2 QUESTIONS BY MS. FITZPATRICK:

3 Q. Thank you.

4 Now, the McKesson lawyer talked
5 to you a little bit about the duty to ship
6 and when that -- when that duty existed and
7 when it didn't.

8 The CSA, which Mr. Lanier put
9 in front of you, says "report when
10 discovered," does it not?

11 MR. EPPICH: Object to the
12 form.

13 MS. MCCLURE: Form. Calls for
14 a legal conclusion.

15 THE WITNESS: The CSA does not.
16 The regulations do.

17 QUESTIONS BY MS. FITZPATRICK:

18 Q. Excuse me, yes. Apologies.

19 The regulations say -- let me
20 fix this. The regulations say "report when
21 discovered," correct?

22 A. Yes.

23 MS. MCCLURE: Same objections.

24 QUESTIONS BY MS. FITZPATRICK:

25 Q. Okay. Now, I looked up the

1 definition of the word "when" because I was a
2 little confused about why we were still
3 fighting about this. But the definition of
4 "when" is "at or during that time."

5 Is that your understanding of
6 the definition of "when"?

7 MS. MCCLURE: Same objections,
8 including outside the scope of
9 recross.

10 THE WITNESS: When, yes.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. Thank you, sir.

13 Now, the McKesson lawyer talked
14 to you about McKesson's reactions and
15 responses to the DEA feeling the need to
16 reach out to McKesson and inform them that
17 they were distributing pills to some of the
18 rogue Internet pharmacies.

19 Do you recall that line of
20 questioning?

21 A. Yes.

22 Q. Okay.

23 MR. EPPICH: Objection to the
24 form. Misstates the testimony.

25

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. And the McKesson lawyer
3 represented to you that McKesson reacted
4 promptly.

5 Do you recall that?

6 MR. BENNETT: You can answer.

7 THE WITNESS: Yes.

8 QUESTIONS BY MS. FITZPATRICK:

9 Q. Sir, isn't it true that
10 McKesson got busted?

11 MR. EPPICH: Objection.

12 Argumentative.

13 MS. MCCLURE: Form.

14 Argumentative.

15 QUESTIONS BY MS. FITZPATRICK:

16 Q. I forget the exact exhibit
17 number --

18 MR. EPPICH: Calls for
19 speculation.

20 QUESTIONS BY MS. FITZPATRICK:

21 Q. -- but Mr. Lanier showed you a
22 copy of the 2007 McKesson settlement
23 agreement.

24 Do you recall that?

25 MR. EPPICH: Objection.

1 Misstates the document. Form.

2 THE WITNESS: Yes.

3 QUESTIONS BY MS. FITZPATRICK:

4 Q. Okay. And, sir, did you know
5 that they did it again?

6 MR. EPPICH: Objection.

7 Argumentative. Form.

8 MS. MCCLURE: Form.

9 THE WITNESS: I'm not aware of
10 what happened after that time, no.

11 (Mapes Exhibit 38 marked for
12 identification.)

13 QUESTIONS BY MS. FITZPATRICK:

14 Q. All right. Sir, I'm going to
15 mark for you Exhibit Number 38, I believe
16 this is.

17 All right. Sir, I'd like you
18 to turn to --

19 MR. BENNETT: Counsel, can he
20 have a minute to review the document?

21 MS. FITZPATRICK: Oh, sure.

22 Well, and I'll tell you, the
23 only page I'm going to be looking at
24 is the one that ends in 5352 at the
25 bottom for the McKesson Bates.

1 MR. EPPICH: Object to the
2 scope and use of this document on
3 redirect.

4 MS. MCCLURE: And scope in
5 terms of authorization.

6 MR. BENNETT: Review as much of
7 this as you need to familiarize
8 yourself with the document.

9 THE WITNESS: Okay.

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Mr. Mapes, do you see paragraph
12 number 2 on the page labeled 5352? That's
13 really the only paragraph I'm going to be
14 talking to you about and -- just a few
15 sentences in that paragraph.

16 Do you see I have it here on
17 the screen in front of you?

18 MR. EPPICH: Objection. Scope.
19 Foundation. Calls for speculation.

20 MR. BENNETT: And I'll object
21 to the extent the witness needs more
22 time to familiarize himself with the
23 document before he answers questions.

24 Whenever you're prepared,
25 please let her know that you're ready

1 to go forward.

2 THE WITNESS: Okay.

3 QUESTIONS BY MS. FITZPATRICK:

4 Q. And let's try this. Let me --
5 why don't I start, and if you have any
6 questions or if you feel you need to look at
7 any other of the pages, then we can do that.

8 Does that work for you, sir?

9 A. Okay.

10 Q. All right. So if you follow
11 with me here, it states: "McKesson
12 acknowledges that at various times during the
13 period from January 1, 2009" --

14 That's after the 2007
15 settlement agreement, correct?

16 MR. EPPICH: Objection. Scope.
17 Foundation. Calls for speculation.

18 THE WITNESS: Yes, it is.

19 QUESTIONS BY MS. FITZPATRICK:

20 Q. Okay.

21 -- "up through and including
22 the effective date of this agreement, it did
23 not identify or report to the DEA certain
24 orders placed by certain pharmacies which
25 should have been detected by McKesson as

1 suspicious based on the guidance contained in
2 the DEA letters about the requirements set
3 forth in 21 CFR Section 1301.74(b)."

4 And 74(b), that's the section
5 that Mr. Lanier had to point out to you,
6 correct? The McKesson lawyer hadn't shown
7 you that one initially?

8 MS. MCCLURE: Form. Compound.
9 Argumentative.

10 MR. EPPICH: Objection.
11 Misstates testimony. Form. Scope.
12 Foundation.

13 THE WITNESS: I don't recall
14 when that was first pointed out.

15 QUESTIONS BY MS. FITZPATRICK:

16 Q. Okay. And 21 USC Section
17 842(a)(5), "McKesson has taken steps to
18 prevent such conduct from occurring in the
19 future, including the measures delineated in
20 the compliance addendum."

21 Did I read that correctly?

22 MR. EPPICH: Objection.
23 Foundation. Calls for speculation.
24 Scope.

25 THE WITNESS: Yes.

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. And I found it interesting that
3 the same language about McKesson taking steps
4 to prevent such conduct from occurring in the
5 future appears in the 2007 settlement
6 agreement as well.

7 Did you know that, sir?

8 MR. EPPICH: Objection. Scope.
9 Foundation. Calls for speculation.

10 THE WITNESS: No, I didn't.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. So, sir, even if the DEA is
13 using the tools that the lawyer for Walmart
14 talked about for quite a bit yesterday, one
15 such being a suspension order and having the
16 Department of Justice -- supporting the
17 Department of Justice and entering into a
18 settlement agreement, that doesn't
19 necessarily mean the company won't do it
20 again, correct?

21 MR. EPPICH: Objection. Scope.
22 Foundation. Calls for speculation.
23 Calls for legal conclusion and
24 misstates facts.

25 MR. STEPHENS: Objection. Also

1 misstates the question and the
2 testimony.

3 QUESTIONS BY MS. FITZPATRICK:

4 Q. You can answer, sir.

5 A. I have now forgotten the
6 question.

7 Q. No problem. So I'll read it
8 back.

9 Even if the DEA is using the
10 tools -- you recall the discussion with the
11 Walmart lawyer yesterday about the tools
12 available to the DEA that in his opinion
13 another person may not have access to.

14 Do you recall that?

15 A. I do.

16 Q. Okay. So even if the DEA is
17 using those tools, one of which being a
18 suspension order that could lead to a
19 settlement agreement, that does not mean that
20 the company is not going to continue to break
21 the law, does it?

22 MR. EPPICH: Objection. Scope.
23 Form. Calls for speculation.

24 THE WITNESS: It does not.

25

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. And the fact that McKesson, in
3 2007, signed a settlement agreement and
4 agreed to not do it again, they did it again,
5 didn't they?

6 MR. EPPICH: Objection. Form.
7 Foundation. Scope. Misstates the
8 documents and testimony and misstates
9 facts.

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Didn't they admit to doing
12 that, sir?

13 MR. EPPICH: Same objections.

14 THE WITNESS: Yes, they did.

15 QUESTIONS BY MS. FITZPATRICK:

16 Q. Okay. Do you think it's just
17 the cost of doing business for the company?

18 MR. EPPICH: Objection.

19 Argumentative.

20 QUESTIONS BY MS. FITZPATRICK:

21 Q. These settlement agreements?

22 MR. EPPICH: Objection.

23 Argumentative. Form. Calls for
24 speculation. Scope.

25 THE WITNESS: No, I don't think

1 it's just the cost of doing business.

2 QUESTIONS BY MS. FITZPATRICK:

3 Q. Okay. And that's your opinion
4 sitting here today as a paid consultant for
5 one of the companies that's a defendant in
6 this litigation, correct?

7 A. Yes.

8 MS. MCCLURE: Objection.
9 Argumentative.

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Now, I want to ask -- the last
12 thing I'm going to ask you about is the
13 lawyer for McKesson talked to you a lot about
14 HIPAA and that companies don't have patient
15 medical records.

16 Do you recall that?

17 A. I recall the discussion, yes.

18 Q. Okay. And I believe what he
19 was getting at was he was trying to make the
20 point with you that because the companies --
21 because he represented to you that companies
22 did not have the patient medical records,
23 there was no way for the companies to monitor
24 overprescribers.

25 Was that your understanding?

1 MR. EPPICH: Objection.

2 Misstates the question and testimony.

3 Form.

4 THE WITNESS: That wasn't my

5 understanding of his question.

6 QUESTIONS BY MS. FITZPATRICK:

7 Q. Okay. Let me ask you this: Do
8 you think it would be more fair if the
9 McKesson lawyer had told you the whole truth,
10 had talked with you and told the jury the
11 whole truth?

12 MS. MCCLURE: Objection.

13 Argumentative. Scope.

14 Mischaracterizes the questions.

15 MR. EPPICH: I'll join in that
16 objection. Thank you very much.

17 THE WITNESS: And the question
18 is that the --

19 QUESTIONS BY MS. FITZPATRICK:

20 Q. Is it important to tell the
21 whole truth, is the question.

22 MS. MCCLURE: All those same
23 objections.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MS. FITZPATRICK:

2 Q. Okay. And did you know that
3 manufacturers have the data of not only their
4 top prescribers but all prescribers?

5 MR. EPPICH: Objection. Form.
6 Foundation. Calls for speculation.
7 Vague.

8 MS. MCCLURE: Scope. Both of
9 the Touhy notice as well as outside
10 the scope of redirect.

11 QUESTIONS BY MS. FITZPATRICK:

12 Q. You can answer, sir.

13 A. I know that there is data
14 available to manufacturers. Whether it's
15 complete and of all prescribers, I don't
16 know, but --

17 Q. So you don't -- I'm sorry, sir,
18 were you finished?

19 A. Yeah. I don't know the
20 completeness and the scope of the data, but
21 there is some data available, yes.

22 Q. Okay. And the companies can do
23 the red flag test without a prescription
24 record, correct?

25 MS. MCCLURE: Objection.

1 Vague. Ambiguous. Foundation.

2 Scope, both of Touhy and redirect.

3 MR. EPPICH: Also object that
4 the demonstrative does not reflect the
5 witness' testimony if it is meant to
6 do so.

7 MS. MCCLURE: But I assume we
8 still have a standing objection to
9 those.

10 MS. FITZPATRICK: You do, and
11 it's a demonstrative. I can write
12 whatever I want. It doesn't have to
13 be exactly what the witness says.

14 QUESTIONS BY MS. FITZPATRICK:

15 Q. But go ahead, Mr. Mapes.

16 MR. EPPICH: Just making a
17 record in case you want to use it at
18 trial.

19 THE WITNESS: That's correct.

20 MS. FITZPATRICK: Okay. Let me
21 take a minute. I don't think we have
22 anything else, but let me just...

23 All right. We're done. Thank
24 you, Mr. Mapes.

25 MR. BENNETT: Mr. Mapes, you'll

1 have an opportunity to read this
2 deposition or you can waive that
3 right. It's up to you to decide
4 whether you want to review it or
5 whether you want to waive signature.

6 THE WITNESS: And if I review
7 it and find something that I --

8 MR. BENNETT: You would have
9 the right in your errata sheet to
10 correct errors.

11 But you have to tell the court
12 reporter now, and if you don't tell
13 her anything, then you don't waive
14 signature and you'll get it to review.

15 THE WITNESS: Yeah, I think I'd
16 rather review it.

17 MR. BENNETT: He does not want
18 to waive signature. Thank you.

19 All right. Thank you,
20 Mr. Mapes.

21 VIDEOGRAPHER: This concludes
22 today's deposition. The time is 2:22.
23 (Deposition concluded at 2:22 p.m.)

24 - - - - -

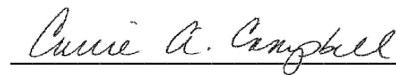
25

CERTIFICATE

I, CARRIE A. CAMPBELL, Registered
Diplomate Reporter, Certified Realtime
Reporter and Certified Shorthand Reporter, do
hereby certify that prior to the commencement
of the examination, Michael Mapes, was duly
sworn by me to testify to the truth, the
whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the
foregoing is a verbatim transcript of the
testimony as taken stenographically by and
before me at the time, place and on the date
hereinbefore set forth, to the best of my
ability.

I DO FURTHER CERTIFY that I am
neither a relative nor employee nor attorney
nor counsel of any of the parties to this
action, and that I am neither a relative nor
employee of such attorney or counsel, and
that I am not financially interested in the
action.



CARRIE A. CAMPBELL,
NCRA Registered Diplomate Reporter
Certified Realtime Reporter
Notary Public
Dated: July 13, 2019

1 INSTRUCTIONS TO WITNESS

2
3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the
6 appropriate space on the errata sheet for any
7 corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it. You are signing
10 same subject to the changes you have noted on
11 the errata sheet, which will be attached to
12 your deposition.

13 It is imperative that you return
14 the original errata sheet to the deposing
15 attorney within thirty (30) days of receipt
16 of the deposition transcript by you. If you
17 fail to do so, the deposition transcript may
18 be deemed to be accurate and may be used in
19 court.

ACKNOWLEDGMENT OF DEPONENT

I, _____, do
hereby certify that I have read the foregoing
pages and that the same is a correct
transcription of the answers given by me to
the questions therein propounded, except for
the corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.

Michael Mapes

DATE

Subscribed and sworn to before me this
_____ day of _____, 20 _____.

My commission expires: _____

Notary Public

1

- - - - -

ERRATA

2

- - - - -

3

PAGE

LINE

CHANGE/REASON

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

- - - - -

LAWYER'S NOTES

2

- - - - -

3

PAGE

LINE

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25